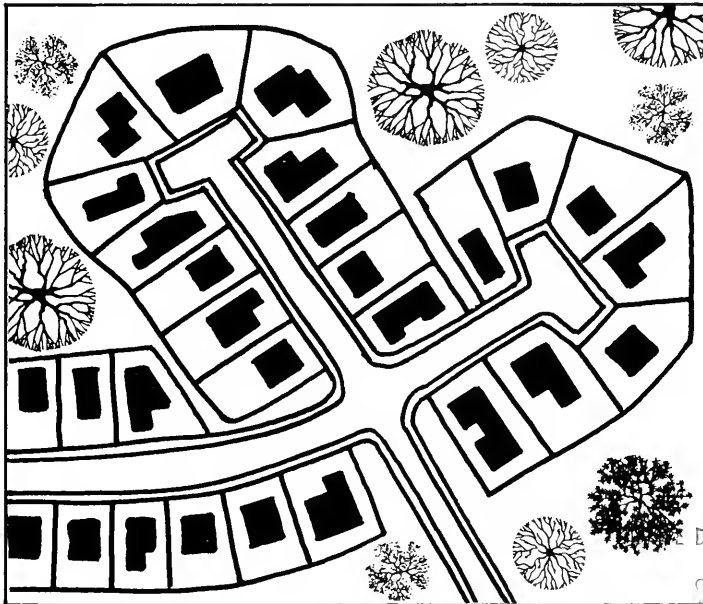


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Prepared to Comply with the Montana Subdivision and Platting Act



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December, 1993

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Upon request, this publication will be made available in an alternative accessible format.

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INTRODUCTION

The Montana Model Subdivision Regulations is a publication intended to serve as an example and reference for local governments to use in preparing or revising their own regulations. We encourage local governments to adapt the Model to match local concerns and needs. The Model is an advisory publication. It is part of an on-going program of technical assistance provided by the Department of Commerce (DOC) Community Technical Assistance program (CTAP) to local government officials, planning boards, planning staff, and development interests.

A 1981 amendment to the Montana Subdivision and Platting Act (MSPA) sets out a framework of minimum requirements for local subdivision regulations. A 1982 version of the Model provided guidance to local governments for drafting local subdivision regulations that met those minimum requirements.

Legislation passed in the 1993 Legislative session made a number of significant changes to the MSPA: The 20-acre definition of "subdivision" was changed to 160 acres; the occasional sale exemption was deleted, and use of the family conveyance exemption was restricted to a "one-time only" transfer of land to each member of the immediate family; and the eight public interest criteria were changed to five primary review criteria. The legislation also directed local governments to amend their local subdivision regulations to comply with the statutory changes by October, 1993.

This 1993 update of the Model provides suggested provisions that meet the new changes to the MSPA. The 1993 Model also contains commentary to explain a number of the key suggested provisions. While much of the procedural portion of the Model is based on statutory time periods and requirements, there are still many opportunities to adjust those provisions to local needs. The design standards portion of the Model offers even greater opportunities to tailor the requirements to fit particular concerns and problems at the local level.

As a result of the 1993 legislative changes to the MSPA, a greater percentage of land divisions very likely will be subject to local government review and approval. In place of the previous widespread use of the occasional sale and 20-acre exceptions to review, local government probably will see submittal of a greater number of minor subdivisions, especially those containing one or two lots. These small subdivisions usually will not create the impacts and concerns of larger subdivisions, and CTAP urges local governments to adopt procedures that allow more expeditious review of these "low impact" subdivisions.

The Model will be most useful to jurisdictions with established planning boards. Many rural counties and communities that have had little or no previous experience with subdivisions or subdivision review probably will see some activity in the form of minor subdivisions, particularly those of one or two lots. The Model suggests procedures to handle subdivision review without stressing the capacities of rural local jurisdictions. Communities are urged to form planning boards, and those that have not but are interested in doing so may contact CTAP (phone 444-3757) for assistance.

The Model offers provisions to deal with the amended criteria for reviewing and approving subdivisions. Appendix E provides suggested statements for compiling a written Findings of Fact required under the MSPA. The Model also provides more comprehensive suggestions for using

subdivision improvements agreements and improvements guaranties. Ensuring that required improvements are properly installed is one of the greatest benefits of subdivision review and too often is overlooked by local officials.

In many areas in Montana, suitable and affordable housing is in short supply. The CTAP revised the Model Subdivision Regulations with consideration for reducing barriers to affordable housing, while safeguarding public health and safety in the development of housing. Several of these revisions include suggestions for expeditious review of minor subdivisions, and for simplified and less restrictive road standards.

In addition to this Model, the CTAP has recently published a series of publications to assist local governing officials and staff and the private citizens. These publications include:

- Montana's Subdivision and Surveying Laws and Regulations
- A Primer: Subdivision Review Under the Montana Subdivision And Platting Act
- A Manual for the Administrator of the Montana Subdivision and Platting Act
- A Guide to the Exemptions of the Montana Subdivision and Platting Act
- A Key to the Filing Requirements of the Montana Subdivision and Platting Act

If you have any questions about the 1993 Model Subdivision Regulations or other Department publications, please contact the Department of Commerce, Community Technical Assistance Program, 1424 Ninth Avenue, Helena, Montana 59620, phone (406) 444-3757.

AFFORDABLE HOUSING

This publication, Model Subdivision Regulations, suggests procedures and standards intended to protect the public interest, promote pleasant, convenient and functional neighborhoods, and to encourage the provision of affordable housing.

Review Process

The Model encourages local jurisdictions to include a preapplication conference as part of the local review process. The preapplication conference can save a developer time, money and frustration by assuring a clear understanding of the procedures and application requirements, and the design standards that must be met. By knowing from the beginning what information will be needed, and that excessive design features can be avoided will save the subdivider time and money.

The suggested procedures would allow the preliminary plat application for a major subdivision to be reviewed and action taken within approximately 50 days. The Model suggests procedures that would allow governing body action on minor subdivisions within approximately 25 days, and action on "low impact" subdivisions within 15–20 days.

The Model contains an extensive set of appendices that contain sample forms and documents. These samples will save a subdivider a significant amount of time and exasperation in submitting the required documents that are necessary to submit proper preliminary and final subdivision plats. This Model Subdivision Regulations is one of a number of manuals and other documents that the Department of Commerce has published to assist all persons involved in the subdivision process.

"Low Impact" Subdivisions

Qualifying one- and two-lot subdivisions can be addressed under expeditious provisions. The Model suggests a brief review process involving 15–20 days. Reduced application requirements are suggested that will reduce time and costs for the applicant. The Model also offers reduced road standards that local officials might consider for "low impact" subdivisions.

One- and two-lot subdivisions likely will replace the creations of parcels by the occasional sale exemption and 20-acre tracts. Although raw land sells less expensively than improved lots, ultimately constructing all-season roads, functioning water and sewer systems and storm drainage facilities at realistic and necessary costs to make a parcel a livable home site. Small subdivisions not only ensure that proper building sites are provided, they reveal the true costs of a buildable lot up front. Low and moderate income lot buyers are less apt to be caught unaware of real costs later, and they will benefit by the fact that requirements have been met to obtain good title to the property.

House Bill 408, by deleting the 20-acre exception, probably will promote affordable housing by fostering the creation of smaller lots with proper improvements that will offer a supply of affordable building sites for low and moderate income people.

Design Standards

The Model tries to make the design standards as specific as possible to remove uncertainty about the requirements. For those approval criteria that are imprecise, the appendix offers suggested language or examples to help clarify application of the criteria.

Land cost is one significant element of the cost of housing. The standards suggested in this Model for road rights-of-way and road widths are minimums that prevent unnecessary consumption of land. The design standards have been developed so that cluster development can be readily designed. The Model recommends reducing road rights-of-way to 50 feet on level terrain because a minimum of cutting and filling usually is needed. Swales are recognized as an adequate means of removing storm water, and curbs and gutters are not mandated. "T" turnarounds are recognized as a land-saving alternative to cul-de-sacs.

MODEL SUBDIVISION REGULATIONS

1. GENERAL PROVISIONS

1-A. Title

These regulations shall be known and may be cited as "The Subdivision Regulation of (City or County):" hereinafter referred to as "these regulations".

1-B. Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (MSPA) [Title 76, Chapter 3, MCA].

1-C. Purpose

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey (76-3-102, MCA).

Further, to support the purposes of 76-3-102, MCA, these regulations are intended to promote:

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The provision of proper physical and legal road access, including obtaining of necessary easements.
5. The provision of adequate open spaces for travel, light, air and recreation.
6. The provision of adequate transportation, water, drainage, and sanitary facilities.
7. The avoidance or minimizing of congestion.
8. The avoidance of subdivision which would involve unnecessary environmental degradation.
9. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation or other public services.

10. The avoidance of excessive expenditure of public funds for the supply of public services.
11. The manner and form of making and filing of any plat for subdivided lands.
12. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of (City or County).

If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements shall apply.

I-E. Severability

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

Comment: The procedures specified in the following pages are drafted on the assumption that the local government has designated a person to act as subdivision administrator. The Department of Commerce strongly urges local governments to designate a subdivision administrator. Having an administrator will benefit both local officials and subdividers by expediting the review process and ensuring a thorough review.

A subdivision administrator can greatly facilitate the ease and timeliness with which a local government handles subdivision review and approval. Because planning boards and elected governing bodies often meet only once or twice per month, a subdivision administrator can expedite the review process by receiving applications, examining applications for completeness, arranging for public hearings if necessary, publishing notice of hearings, making on-site inspections of proposed subdivisions, preparing information (and recommendations if desired) for the planning board and governing body, and maintaining files of subdivision proposals.

Usually the staff planner acts as the subdivision administrator. In jurisdictions without a planner or planning consultant, finding a person to serve as subdivision administrator should be a top priority. Consultants who are reasonably available and affordable could be one option. Other options include: a county commissioner or city alderman, a planning board chairman or member, a county employee, or the county sanitarian.

One approach used successfully in several counties is to appoint a Plat Review Committee (typically with three members) from members of the planning board. A Plat Review Committee also can be useful in jurisdictions with a planner or subdivision administrator to help ensure a comprehensive review of subdivision proposals and to share the burden of proposing changes in design, conditions for approval or disapproval.

II. MAJOR SUBDIVISIONS

II-A. Review and Approval Procedures for Major Subdivisions*

II-A-1. Construction Timing

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given preliminary approval of the proposed subdivision plat.

II-A-2. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

* Subdivisions of 6 or more lots, or subdivisions of 5 or fewer lots that do not qualify as minor subdivisions.

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana.
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract, and
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."
- e. A copy of the contracts and escrow agreement described above must be submitted to the planning board (or subdivision administrator).

II-A-3. Pre-application Procedures

Comment: Local governments would greatly benefit by requiring a pre-application conference between the subdivider and subdivision administrator or planning board. Most problems and misunderstanding regarding procedures, requirements and standards can be overcome at this conference, making the review process easier for both subdividers and local officials.

The subdivider shall meet with the subdivision administrator prior to submitting the required preliminary plat. The purpose of this meeting is to discuss these regulations and standards, to familiarize the subdivider with the applicable goals and objectives of (City or County Comprehensive Plan or other adopted documents), and to discuss the proposed subdivision as it relates to these matters. The subdivision administrator shall notify the subdivider of the option of concurrent review of the subdivision by the local government and the Montana Department of Health and Environmental Sciences. The subdivider shall provide a sketch plan of the proposed subdivision for review and discussion. The sketch plan shall be a legible drawing showing in simple form the layout of proposed features in relation to the existing site condition. The sketch plan may be a freehand sketch made directly on a print of a topographic map. Scale dimensions must be noted. The sketch plan shall include pertinent information such as: location, approximate tract and lot boundaries, description of general terrain, natural features, existing structures and improvements, and proposed public improvements.

II-A-4. Permission to Enter

The governing body or its designated agent(s) or agency may conduct such investigations, examination, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulation. The submission of pre-application materials or a preliminary plat for review shall constitute a grant of permission to enter the subject property.

II-B. Preliminary Plats

II-B-1. Preliminary Plat Submittal

The subdivider shall submit for review and approval a preliminary plat of the proposed subdivision which conforms to the requirements of these regulations. The preliminary plat shall be prepared in form and with contents and supplements as required by Appendix B, and conform to the Design and Improvement Standards set forth in Section IV.

The subdivider shall submit the following application information to the subdivision administrator:

- a. A completed copy of the Preliminary Plat Application Form (see Appendix A), or the DHES/Local Government Joint Application Form (see Appendix C);

Comment: The MSPA gives subdividers the discretion to submit a DHES/Local Government Joint Application Form in place of a Preliminary Plat Application Form (Appendix C contains the Joint Form), and to request concurrent subdivision review by the DHES and local government. Few subdividers desire concurrent review, but the Joint Form provides good information for local officials whether or not the subdivider requests concurrent review.

- b. Environmental assessment (see Appendix D), unless exempt;
- c. The required review fee as stated in the Fee Schedule on page 49; and
- d. _____ copies of the preliminary plat and plat supplements.

Review by public agencies or utilities shall not delay the governing body's action on the preliminary plat beyond the 60 day review period. Any review comments must be made available to the subdivider and to the general public upon request.

Comment: Jurisdictions that do not have a subdivision administrator usually require slightly different procedures and timing at this stage of the review process compared to jurisdictions that have a subdivision administrator. Although local governments are strongly urged to designate a subdivision administrator, two options are included which both comply with the 60 day limit.

- Option I -- for jurisdictions with a planning board but no subdivision administrator:

The application materials and fee must be submitted at a regular meeting of the planning board. The planning board will review the information to determine whether or not the application is complete. If the application is complete, the planning board will publish a notice of public hearing and review the application at the next regular meeting, in accordance with Sections II-B-2 and II-B-3. The 60 day review period shall commence on the date that the planning board accepts the application.

Incomplete applications along with the review fee shall be returned to the subdivider with a statement describing the deficiencies. The subdivider may correct the deficiencies and resubmit the application at the next meeting of the planning board.

- Option II -- for jurisdictions with a subdivision administrator and a planning board:

The application materials and fee shall be submitted to the subdivision administrator 30 days prior to a regular meeting of the planning board. The subdivision administrator will review the information to determine whether or not the application is complete. If the application is complete, the administrator will publish a notice of a public hearing to review the application at the next regular meeting, in accordance with Sections II-B-2 and II-B-3. The 60 day review period shall commence on the date that the subdivision administrator accepts the application.

If the subdivision administrator determines that the application is incomplete, the subdivider shall be notified of the deficiencies at least five days prior to the planning board meeting. The subdivider may then correct the deficiencies and present the application to the planning board. If the application is complete, the procedure specified above shall be followed.

II-B-2. Public Hearing

After accepting a preliminary plat application as complete, the planning board shall hold a public hearing on the preliminary plat. When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible. Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall be notified of the hearing by certified mail not less than 15 days prior to the date of the hearing. The planning board may require the posting of the notice of the hearing at conspicuous places on the proposed site.

Comment: Deciding on a Review Process

In deciding on a subdivision review process, local officials should begin with several considerations. First, whether the governing body meets one time per month or more often is important because it must act on the preliminary plat within the 60 day review period. Another consideration is whether the local newspaper is published daily or weekly, because the MSPA requires that notice of the public hearing be published at least 15 days before the hearing. Typically the hearing is held by the planning board at its regular meeting, so the timing of the published notice is important. Many jurisdictions require the application to be submitted 20–30 days prior to the planning board meeting to give the subdivision administrator time to publish notice, review the application and prepare a report for the planning board in time for the public hearing.

II-B-3. Planning Board Recommendation

The planning board shall:

- a. consider the following:
 - 1) relevant evidence relating to the public health, safety, and welfare;
 - 2) the environmental assessment;
 - 3) any officially adopted comprehensive plan for the area involved;
 - 4) review criteria specified in Section II-B-4 of these regulations; and
 - 5) whether the preliminary plat conforms to the provisions of:
 - a) the Montana Subdivision and Platting Act;
 - b) these regulations;
 - c) applicable zoning regulations;
 - d) any adopted comprehensive plan for the area involved; and
 - e) other regulations in effect in the area of the proposed subdivision; and
- b. within 10 days after the public hearing, submit in writing the following to the governing body:
 - 1) its findings regarding the items under subsection a, above;
 - 2) recommended Findings of Fact that weigh the review criteria (pursuant to 76–3–608, MCA); and
 - 3) a recommendation for approval, conditional approval, or disapproval of the plat.

II-B-4. Preliminary Plat Approval

The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 60 days of determination of completeness, unless the subdivider consents to an extension of the review period. If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions which must be met to assure approval of the final plat.

The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the following demonstrate that development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, these regulations, any officially adopted comprehensive plans, and applicable zoning regulations:

- a. the preliminary plat;
- b. environmental assessment;
- c. planning board recommendations; and
- d. additional information.

Comment: New Review Criteria

The 1993 Legislature changed the basis for local government approval of a subdivision (76-3-608, MCA). The finding of public interest was deleted, but 5 of the 8 previous criteria were retained as part of the basis of approval. Also, the subdivider must show evidence that legal and physical road access and any needed utility easements will be provided. Appendix E contains a suggested Findings of Fact to consider the new review criteria.

"Legal access" means that the subdivision abuts a public (a city, county or state road), or that the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to the subdivision. "Physical access" means that a road conforming to the local subdivision standards provides vehicular access from a public road to the subdivision.

The governing body shall issue a written Findings of Fact that discusses and weighs the following criteria (pursuant to 76-3-608, MCA):

- a. Effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and the public health and safety;**
- b. Compliance with the requirements of the MSPA, and the regulations and review procedures of these local subdivision regulations;**
- c. The provision of easements for the location and installation of any needed utilities; and**
- d. The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.**

The governing body may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

II-B-5. Preliminary Plat Approval Period

Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than three calendar years or less than one calendar year. At the end of this period the governing

body may, at the request of the subdivider, extend its approval for a period of no more than one year, except that the governing body may extend its approval for a period of more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-C-5, page 12.

Comment: Role of a Comprehensive Plan

In addition to the criteria for the governing body's decision on a preliminary plat set forth in 76-3-608, MCA, the MSPA allows local officials to consider whether a subdivision would conform to an adopted comprehensive plan. The governing body may require that a subdivision comply with the local comprehensive plan, which can make the plan a very important document. The comprehensive plan also can be very beneficial in helping local officials prepare a Findings of Fact that weighs imprecise criteria such as impacts on wildlife and wildlife habitat, impacts on natural environment, and impacts on public health and safety.

Comment: Basis for Approval, Conditional Approval, or Denial of a Subdivision

In addition to the criteria set forth in 76-3-608, MCA, for governing body action regarding a subdivision application, local officials may consider whether the subdivision would conform to an adopted comprehensive plan, and any applicable zoning regulations. Also, where access roads or other aspects of the subdivision may require crossing or modifying stream beds, banks or channels, the governing body may require that the subdivider obtain a "404" permit from the Corps of Engineers if a navigable stream or wetland would be affected, and a "310" Natural Streambed and Land Preservation permit from the local conservation district if a stream channel would be modified.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing said approval is obtained within the original or extended approval period as provided above.

TABLE 1: Overview: Preliminary Plat Review Process

1. Initial contact with planning board or subdivision administrator: applicant obtains guidelines, forms, and regulations.
2. Pre-application conference: applicant discusses proposal and sketch plan with planning board or subdivision administrator. Potential problem areas are identified and regulations are highlighted.
3. Submittal of formal application:
 - a. To a regular meeting of the planning board. If application is complete (or the board has identified specific missing information that the subdivider must provide), the board shall schedule a public hearing for its next regular meeting, and have notice of the hearing published. The 60 day review period begins on the date of the meeting at which the application is accepted. If the application is deemed so inadequately prepared that missing information cannot be readily identified, the board shall direct the subdivider to resubmit the application;
 - or
 - b. To the subdivision administrator 10 days prior to a regular meeting of the planning board. If the subdivision administrator determines that the application is complete, the planning board, at its meeting, shall authorize publication of notice of a public hearing to be held at its next regular meeting. The 60 day review period begins on the date that the subdivision administrator determines the application to be complete. If the application is deemed so inadequately prepared that missing information cannot be readily identified, the board shall direct the subdivider to resubmit the application;
4. 15 days prior to public hearing, notice of hearing is published and certified letters are mailed to adjacent property owners and subdividers.
5. On-site investigation and administrative review by subdivision administrator or plat review committee.
6. Planning board meeting: public hearing conducted and subdivision reviewed.
7. Planning board recommendation for approval, conditional approval or disapproval of plat submitted in writing to the governing body and subdivider within 10 days of public hearing.
8. Governing body action to approve, conditionally approve or disapprove plat must be completed within the 60 day time limit.

II-B-6. Exemptions From Environmental Assessment

The requirement for preparing an environmental assessment pursuant to Section 76-3-504(1), MCA, shall be waived when:

- a.
 - 1) The proposed subdivision is totally within an area covered by a master plan adopted pursuant to Section 76-1-606, MCA; and
 - 2) Municipal zoning regulations have been adopted pursuant to Sections 76-2-301 through 76-2-328, MCA; or county zoning pursuant to a comprehensive plan has been adopted pursuant to Sections 76-2-201 through 76-2-228, MCA; and
 - 3) A long-range development program of the public works projects has been adopted pursuant to Section 76-1-601(4), MCA; or
- b. The proposed subdivision is the first minor subdivision from a tract of record.

The requirement for preparing an environmental assessment may be waived by the planning board (or governing body where no planning board exists) when:

- 1) The proposed subdivision is in an area covered by a master plan adopted pursuant to Sections 76-1-101 through 76-1-606, MCA and the proposed subdivision will be in compliance with the plan; or
- 2) The subdivision will contain fewer than 10 parcels and less than 20 acres.

When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

II-C. Final Plats

II-C-1. Final Plat Submittal

The final plat must be submitted to the subdivision administrator before the expiration of the preliminary plat approval period as explained in Section II-B-5, page 8.

An application for final plat approval, (see form, Appendix G), together with the final plat, two blue-line copies of the final plat and the appropriate review fee shall be submitted to the planning board at its regular meeting (or to the subdivision administrator).

II-C-2. Final Plat Contents

The final plat submitted for approval shall conform to the preliminary plat as previously reviewed and approved by the governing body and shall incorporate all required modifications. The final plat shall comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix J). Because subdivisions may be completed in phases, separate final plats may be filed that constitute only that portion of the approved preliminary plat that reflects that phase of the development, provided that such portion conforms to all requirements of these regulations and is approved by the governing body.

II-C-3. Final Plat Review

The final plat will be reviewed, provided that all requirements for the form and content and its supplements are met, to assure that it conforms to the approved preliminary plat. Any significant change may require the holding of a public hearing for review.

The governing body may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. When the survey data shown on the plat meet the conditions set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats (Appendix J), the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

II-C-4. Restrictive Covenants -- Approval and Enforcement by Governing Body

- a. The governing body may require that every restrictive covenant shall contain the following language: This (These) covenant(s) may not be repealed or amended without the prior written consent of the (name of governing body).
- b. The governing body may require that in addition to the language specified in paragraph 4a certain restrictive covenants contain the following language: "The (name of governing body) is a party to this restrictive covenant and may enforce the provisions hereof."

II-C-5. Public Improvements Agreement; Guaranty

Comment: One of the most important public benefits of subdivision review is the assurance that necessary improvements (such as roads, culverts, and utilities) are properly designed and installed, and arrangements made to ensure their maintenance. Subdividers may either install the required improvements before the final plat is filed, or delay installation by signing an improvements agreement to install the improvements by a certain date. Local governments should require the subdivider to provide a financial or other security to guarantee the agreement. More local jurisdictions should take better advantage of these agreements and guaranties to ensure proper and timely construction of improvements. In many areas in Montana, a failure by the local government to require an adequate financial guaranty for the subdivider has led to the problem of partially developed subdivisions, where the taxpayers must assume the costs of completing the improvements.

As a condition of approval of the final plat, the subdivider shall have installed all required improvements or shall enter into a subdivision improvements agreement guaranteeing the construction.

installation, and maintenance of all such improvements. A model improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing the agreements, and suggested conditions for maintenance are provided in Appendix H.

If common property is to be deeded to a property owners' association, the covenants and restrictions which govern the association shall, at a minimum, provide for:

- a. Formation of property owners' association before any property is sold;
- b. Mandatory membership for each property buyer and any subsequent buyer (buyers may be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements);
- c. Perpetual reservation of the common property;
- d. The association's responsibility for liability insurance, local taxes, and the maintenance of recreational and other facilities;
- e. Property owners paying their pro-rata share of the cost and that the assessment charged by the association can become a lien on the property;
- f. The association adjusting assessments to meet changing needs;
- g. Means of enforcement, and of receiving and processing complaints;
- h. Required permission of the governing body before the association can be dissolved or the restrictions can be modified; and
- i. A regular maintenance program for roads, parks, buildings, drainage facilities and other mutually controlled facilities.

II-C-6. Final Plat Approval

The governing body shall approve or disapprove the final plat within 45 days of its presentation to the planning board (or subdivision administrator). The planning board (or subdivision administrator) shall examine the final subdivision plat and shall recommend approval only when it conforms to the conditions of approval set forth on the preliminary plat and to the terms of the Montana Subdivision and Platting Act and these regulations.

The governing body shall examine every final subdivision plat and shall approve it when and only when it conforms to the conditions of approval set forth for the preliminary plat and to the terms of the Montana Subdivision and Platting Act and these regulations.

If the final plat is disapproved, the reasons for disapproval shall be stated in the records of the governing body and a copy forwarded to the applicant. The governing body shall return the final plat to the subdivider within ten days of the action. The applicant may then make the necessary corrections and resubmit the final plat for approval. Approval shall be certified by the governing

body on the face of the final plat, and the county treasurer shall certify that all taxes have been paid on the land proposed for subdivision. The acceptance of land dedications shall be made by specific resolution of the governing body and noted on the final plat.

The governing body may withdraw approval of a plat if it determines that such information provided by the subdivider, and upon which such decision was made, is inaccurate.

II-C-7. Final Plat Filing

Within 10 days of the approval of the final plat or minor subdivision plat, the subdivider shall submit for filing the approved final plat and supplementary documents with the county clerk and recorder. After approval, the plat shall not be altered in any manner, either before or after filing. The county clerk and recorder shall refuse to accept any plat for filing that fails to have approval in proper form or that has been altered, and shall file the approved plat only if it is accompanied by the documents specified in Uniform Standards for Final Subdivision Plats.

II-D. Correcting or Amending Filed Final Plats

II-D-1. Correcting Filed Final Plats

Corrections of drafting or surveying errors that in the governing body's opinion will not materially alter the plat may be made by the submission of a corrected final plat for the governing body's approval. The plat shall be entitled "Corrected Plat of the (name of subdivision) Subdivision" and the reason for the correction shall be stated on the face of the plat.

II-D-2. Amending Final Plats

a. Material Alterations

Changes that materially alter any portion of the filed final plat, its land divisions, or improvements shall be made by the filing of an amended plat showing all alterations. Within a platted subdivision, any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder.

The amended plat shall be subject to procedures for major or minor subdivisions, as is appropriate (Sections II-A through II-C of these regulations for major subdivisions or Section III-A through III-C for minor subdivision).

The governing body may not approve an amendment which will place the plat in non-conformance with the standards contained herein unless a public hearing is held on the plat and a written variance from the standards is issued pursuant to Section VIII-B, Variances.

The governing body may not approve an amendment unless it is consented to in writing by all affected property owners.

The final amended plat submitted for approval shall comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix J), with the exception that the title shall include the word "Amended." ("Amended plat of the (name) Subdivision" or (name) Subdivision, Amended.")

b. Exemptions from Amended Plat Review

Amended subdivision plats that show the relocation of common boundaries and the aggregation of lots within platted subdivisions where five or fewer of the original lots are affected within a platted subdivision filed with the county clerk and recorder are exempt from approval as a subdivision. An amended plat must be prepared following the requirements of the Montana Uniform Standards for Final Subdivision Plats (Appendix J) except that in place of the governing body's approval the landowner must certify that the approval of the governing body is not required pursuant to Section 76-3-207 (1), MCA.

III. MINOR SUBDIVISIONS

Minor subdivisions, those subdivisions containing five or fewer lots where proper access to all lots is provided and where no land will be dedicated to public use for parks and playgrounds, shall be reviewed under the procedures set forth on the following pages.

Comment: Minor Subdivisions

Subdivisions containing five or fewer lots and for which no land will be dedicated for park are minor subdivisions and are eligible to be reviewed under abbreviated procedures. Minor subdivisions shall comply with the design standards of local regulations and must be reviewed on the basis of all the review criteria specified in 76-3-608, MCA. The local government is required to prepare a written Findings of Fact pursuant to 76-3-608, MCA.

For a first minor subdivision from a tract of record, the requirements for a public hearing and preparation of an environmental assessment are waived, and the governing body must make the decision regarding approval within 35 days from the date the plat application was submitted.

For a second or subsequent minor subdivision from a tract of record the governing body may require additional procedures, such as holding a public hearing, preparing all or part of an environmental assessment, and allowing a review period longer than 35 days.

Comment: Tract of Record

Since the mid-1970's the MSPA has provided certain procedural exceptions for the first minor subdivision from a "tract of record." In the context of its use in the MSPA, the tract of record means the "parent property" or original tract from which the first minor subdivision is taken. A subsequent minor subdivision taken from either the first minor subdivision or the remaining tract constitutes a "second or subsequent minor subdivision," and is subject to additional requirements local officials might impose under 76-3-505, MCA.

Legislation passed in the 1993 Legislative session defined "tract of record" as a tract of land that is legally described as an independent parcel by any record in the clerk and recorder's office. Deeds, certificates of survey, subdivision plats, and mining patents typically are the types of records that give a legal description of a tract.

The MSPA refers to "tract of record" only with regard to minor subdivisions, and the new definition has no effect on filing and recording procedures nor any other aspect of subdivisions or land divisions.

III-A. General Requirements for Minor Subdivisions

III-A-1. Construction Timing

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given preliminary approval of the proposed subdivision plat.

III-A-2. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana.
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract, and
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."
- e. A copy of the contracts and escrow agreement described above shall be submitted to the planning board (or subdivision administrator).

III-A-3. Pre-application Procedures

Comment: Local governments would greatly benefit by requiring a pre-application conference between the subdivider and subdivision administrator or planning board. Most problems and misunderstanding regarding procedures, requirements and standards can be overcome at this conference, making the review process easier for both subdividers and local officials.

The subdivider shall meet with the subdivision administrator prior to submitting the required preliminary plat. The purpose of this meeting is to discuss these regulations and standards, to familiarize the subdivider with the applicable goals and objectives of (City or County Comprehensive Plan or other adopted documents), and to discuss the proposed subdivision as it relates to these matters. The subdivision administrator shall notify the subdivider of the option of concurrent review of the subdivision by the local government and the Montana Department of Health and Environmental Sciences. The subdivider shall provide a sketch plan of the proposed subdivision for review and discussion. The sketch plan must be a legible drawing showing in simple form the layout of proposed features in relation to the existing site condition. The sketch plan may be a freehand sketch made directly on a print of a topographic map. Scale dimensions must be noted. The sketch plan shall include pertinent information such as: location, approximate tract and lot boundaries, description of general terrain, natural features, existing structures and improvements, and proposed public improvements.

III-A-4. Permission to Enter

The governing body or its designated agent(s) or agency may conduct such investigations, examination, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulations. The submission of pre-application materials or a preliminary plat for review shall constitute a grant of permission to enter the subject property.

III-B. Minor Subdivision Plats

III-B-1. Minor Subdivision Plat Submittal

The subdivider shall submit the following application information to the planning board (or subdivision administrator):

- a. a Preliminary Plat Application Form with supplements as required in Section II-B-1, Preliminary Plat Submittal, or a DHES/Local Government Joint Application Form;
- b. the required review fee as stated in the Fee Schedule on page __; and
- c. __ copies of the minor subdivision plat and any supplements.
- d. For a second or subsequent minor subdivision from a tract of record, additional reasonable requirements (authorized by 76-3-505, MCA.).

Comment: Jurisdictions that do not have a subdivision administrator usually require slightly different procedures and timing of the review process than those that have a subdivision administrator. Therefore, two options are included below that comply with the 35 day limit.

- Option I -- for jurisdictions with a planning board but no subdivision administrator:

The application materials and fee shall be submitted to a regular meeting of the planning board. The planning board will review the information to determine whether or not the application is complete. If the application is complete, the planning board shall review the proposed subdivision in accordance with procedures set forth in Section III-B-6, Minor Subdivision Plat Approval, of these regulations. The 35 day review period will commence on the date of the planning board meeting at which the subdivision application is reviewed.

An incomplete application along with the review fee shall be returned to the subdivider along with a statement describing the deficiencies. The subdivider may correct the deficiencies and resubmit the application at the next meeting of the planning board.

- Option II -- for jurisdictions with a subdivision administrator and a planning board:

The application materials and fee shall be submitted to the subdivision administrator 10 days prior to a regular meeting of the planning board. The subdivision administrator will review the information to determine whether or not the application is complete. If the application is complete, the planning board shall review the proposed subdivision in accordance with procedures set forth in Section III-B-6, Minor Subdivision Plat Approval, of these regulations. The 35 day review period will begin on the date that the subdivision administrator determines that the application is complete.

If the subdivision administrator determines that the application is incomplete, the subdivider shall be notified of the deficiencies at least five days prior to the planning board meeting. The subdivider may then correct the deficiencies and present the application to the planning board. If the application is complete, the procedure specified above shall be followed.

III-B-2. Minor Subdivision Plat Form and Contents

The subdivider may submit either a preliminary plat or a final plat that conforms to the Montana Uniform Standards for Subdivision Plats (Appendix J) for a minor subdivision. With either form of plat, the subdivider must also submit the supplements required for preliminary plats identified in Appendix B of these regulations. The minor subdivision plat shall conform to the design standards as set forth in Section IV of these regulations.

III-B-3. Exemptions from Environmental Assessment

For the first minor subdivision created from a tract of record the requirement for submitting an

environmental assessment shall not apply. For the second or subsequent minor subdivisions from a tract of record the planning board may require preparation of all or part of the environmental assessment.

When an environmental assessment is required, the subdivider shall submit the information requested in Appendix D.

III-B-4. Public Hearing

For the first minor subdivision created from a tract of record, the requirement for holding a public hearing shall not apply. For the second or subsequent minor subdivision from a tract of record, the planning board shall require a public hearing. When a public hearing is held, the requirements in Section II-B-2 of these regulations shall be followed.

III-B-5. Planning Board Recommendation

The planning board shall:

- a. consider the following:
 - 1) relevant evidence relating to the public health, safety, and welfare;
 - 2) any officially adopted comprehensive plan for the area involved;
 - 3) review criteria specified in Section III-B-6, Minor Subdivision Plat Approval, below.
 - 4) whether the preliminary plat conforms to the provisions of:
 - a) the Montana Subdivision and Platting Act;
 - b) these regulations;
 - c) applicable zoning regulations;
 - d) any officially adopted comprehensive plan for the area involved; and
 - e) other regulations in effect in the area of the proposed subdivision; and
- b. within 10 days after the public hearing, submit in writing the following to the governing body:
 - 1) its findings regarding the items under subsection a, above;
 - 2) recommended Findings of Fact that weigh the review criteria pursuant to 76-3-608, MCA; and
 - 3) a recommendation for approval, conditional approval, or disapproval of the plat.

III-B-6. Minor Subdivision Plat Approval

The governing body shall approve, conditionally approve, or disapprove the preliminary plat within 35 days of determination that the application is complete, unless the subdivider consents to an extension of the review period. If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions which must be met to assure approval of the final plat.

The basis for the governing body's decision to approve, conditionally approve, or disapprove a

subdivision shall be whether the following demonstrate that development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, these regulations, an adopted comprehensive plan, and any applicable zoning regulations:

- a. the preliminary plat;
- b. environmental assessment;
- c. planning board recommendations; and
- d. additional information.

Comment: New Review Criteria

The 1993 Legislature changed the basis for local government approval of a subdivision (76-3-608, MCA). The finding of public interest was deleted, but 5 of the 8 previous criteria were retained as part of the basis of approval. Also, the subdivider must show evidence that legal and physical road access and any needed utility easements will be provided. Appendix E contains a suggested Findings of Fact to consider the new review criteria.

In these regulations, "legal access" means that the subdivision abuts a public (a city, county or state road), or that the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to the subdivision. "Physical access" means that a road conforming to the local subdivision standards provides vehicular access from a public road to the subdivision.

The governing body shall issue a written Findings of Fact that discusses and weighs the following criteria (pursuant to 76-3-608, MCA):

- a. Effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and the public health and safety;**
- b. Compliance with the requirements of the MSPA, and the regulations and review procedures of these local subdivision regulations;**
- c. The provision of easements for the location and installation of any necessary utilities; and**
- d. The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.**

The governing body may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

III-B-7. Minor Subdivision Plat Approval Period

Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than three calendar years or less than one calendar year. At the end of this period the governing

body may, at the request of the subdivider, extend its approval for a period of more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-C-5, page 12.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing said approval is obtained within the original or extended approval period as provided above.

II-D-8. Minor Subdivision Final Plat

The final plat shall drawn be in accordance with the appropriate procedural requirements contained in Section II-C, Final Plat.

TABLE 2. OVERVIEW: MINOR SUBDIVISION PLAT REVIEW PROCESS

1. Initial contact with planning board or subdivision administrator: applicant obtains guidelines, forms, and regulations.
2. Pre-application conference: applicant discusses proposal and plat with planning board or subdivision administrator. Potential problem areas are identified and regulations are highlighted.
3. Submittal of formal application and planning board review:
 - a. to a regular meeting of the planning board. If application is complete, planning board reviews the subdivision at that meeting and the 35 day review period starts;
 - or
 - b. to the subdivision administrator 10 days prior to a regular meeting of the planning board. If application is complete, planning board reviews the subdivision at that meeting. The 35 day review period begins on the date that the subdivision administrator determines that the application is complete.
4. On-site investigation and administrative review by subdivision administrator.
5. Subdivision administrator prepares written report and draft Findings of Fact.
6. Planning board recommendation for approval, conditional approval or disapproval of minor subdivision submitted in writing to the governing body and subdivider within ten days of planning board meeting.
7. Governing body action to approve, conditionally approve or disapprove minor subdivision must be completed within the 35 day time limit.

NOTE: Applicant may request an extension of the review time limit at any stage.

III-C. "Low Impact" Minor Subdivisions

Comment: "Low Impact" Minor Subdivisions

Passage of 1993 amendments to the MSPA means that many land divisions that formerly were exempt from local subdivision review now must be reviewed and approved by the local governing body. Now, a number of land divisions that create one or two additional parcels will need local subdivision review. Subdivisions that create only one or two parcels often will have fewer impacts than higher density development. Therefore, the review process can be conducted more quickly, and in many situations the design standards can be less stringent than for larger subdivisions.

When these one- or two-lot subdivisions are created within an urban or suburban setting, it is important that they be designed to be compatible with the larger community and the surrounding land use pattern. Roads, utility easements, drainage facilities and lot and block layout should fit into the established or emerging plan and pattern of surrounding properties.

Subdivisions that create one or two lots in a rural setting usually do not create significant problems associated with residential development. However, by nature of their location in rural areas, these subdivisions can create substantial impacts on wildlife, habitat, water quality, public access and other elements of the natural environment.

These subdivisions can appropriately be reviewed under expeditious procedures, but should meet the design standards governing all other subdivisions. Section III-C-1 sets forth criteria that define "low impact subdivisions. Subdivisions of one or two lots that do not meet all of those criteria would be reviewed under the regular procedures for minor subdivisions.

Local jurisdictions need to adopt a policy regarding road standards for "low impact" subdivisions. Local officials either can require that roads be built to provide year-round access, or can allow seasonal roads that would be built to a lower standard, and require that the lower standard be noted on the plat and instrument(s) of conveyance.

Because local governments probably will be reviewing a significant number of one and two-lot subdivisions in the future, allowing these very small subdivisions to be identified by a number, rather than a name seems appropriate. To minimize confusion from the traditional method of using number to identify certificates of survey and names to identify subdivision plats, numbers on subdivision plats might be given a distinctive prefix, such as an "S" for "subdivision." A decision to use a special subdivision plat numbering system for small subdivisions is a decision that should be made by the county commission in consultation with the county clerk and recorder.

To expedite the process, review of "low impact" subdivisions should be administrative only. The subdivision administrator or plat review committee would make recommendations directly to the governing body, who would take action. Where a governing body holds regular meetings more often than once per month, expeditious review and approval is possible.

III-C-1. Criteria Defining "Low Impact" Minor Subdivisions

"Low impact" subdivisions are those subdivisions where:

- a. Only one or two additional lots would be created,
- b. The proposed subdivision is the first division of land from a tract of record,
- c. The occasional sale or family conveyance exemptions have not been previously used to create the subject property or adjacent parcels, and
- d. The proposed subdivision is not located on land:
 - 1) unsuitable for development, as defined by local subdivision regulations,
 - 2) subject to natural or man-made hazards, or
 - 3) where significant adverse effects on wildlife, the natural environment or public health or safety would occur.

Comment: The intent of the procedures for "low impact" subdivisions is to expedite the review of subdivisions that have minimal impact. However, even a one- or two-lot subdivision could be proposed under circumstances that would warrant a more extensive review. For example, a subdivision might be proposed in an area that could affect a wetland or critical wildlife area, and the subdivision administrator may want time to consult appropriate agencies or technical persons for comment. In another situation, a number of small subdivisions might have been created in a vicinity and the local officials want time to assess the cumulative impacts. The fourth ("d.") criterion defining "low impact" subdivisions in III-C-1 above is a "safety valve" for local officials to allow them more time for review in unusual situations. The 35-day review period would still apply for a first minor subdivision from a tract of record.

III-C-2. Review Procedures for "Low Impact" Minor Subdivisions

- a. The subdivider and subdivision administrator hold a pre-application meeting.
- b. Subdivider or agent submits plat and application to subdivision administrator. Application includes:
 - 1) 2 paper copies of Plat that conforms to the local requirements for Preliminary Plats, except that (c) below can substitute for the required contour maps and drainage plan;
 - 2) Plat's title block includes "Subdivision Plat No. _____";
 - 3) USGS topographic map showing location of subdivision and road access;
 - 4) Evidence of a suitable building site, suitable drainfield site, and adequate water supply;
 - 5) Evidence of legal and physical access, including adequate and appropriate easements if necessary, and necessary utility easements;
 - 6) Names of property owners adjacent to subdivision;
 - 7) An improvements agreement and financial guaranty, if applicable; and
 - 8) A commitment to pay cash donation in lieu of park land if more than one additional lot is created.

Comment: Under 76-3-601, MCA, a preliminary plat need not be submitted for a minor subdivision. The subdivider has the option of submitting a final plat, which will have the surveying completed and will be virtually ready for filing upon approval of the governing body. Whether the subdivider submits a preliminary plat or final plat, the local government will need the preliminary plat supplements (e.g., vicinity map, contour map) in order to properly review the proposed subdivision. By submitting a final plat, the subdivider may be able to file the plat in less time, **but he takes the risk that the governing body will require changes in the design and layout, which would necessitate re-surveying.**

The pre-application meeting is valuable as a means to explain these options and risks.

- c. When the administrator accepts the application as complete, the action triggers the statutory 35 day review period, and if possible, a shorter (15-21 day) local review period for "low impact" subdivisions.
- d. Subdivision administrator reviews subdivision plat and application for compliance with:
 - 1) survey requirements,
 - 2) local design standards,
 - 3) provision of legal and physical access, including adequate and appropriate easements, if necessary,
 - 4) utility easements,
 - 5) primary review criteria of 76-3-608, MCA, and
 - 6) an acceptable improvements agreement with financial guaranty, if applicable.
- e. Subdivision administrator reviews plat and application and submits a recommended written Findings of Fact pursuant to 76-3-608, MCA, to the governing body within 7-14 days after submittal.
- f. The governing body, at its next regular meeting, makes any changes to the written Findings of Fact, and acts to approve, conditionally approve or disapprove the subdivision. The subdivider is notified of the governing body's action.
- g. The subdivider:
 - 1) completes any required surveying functions and prepares a final plat that complies with the Uniform Standards for Surveying and Monumentation,
 - 2) meets any conditions specified by governing body,
 - 3) submits final plat, any supplements, cash donation in lieu of park land if required to the administrator for a final check, and
 - 4) submits final plat and required documents to the county clerk and recorder for filing.

III-C-3. Design Standards for "Low Impact" Subdivisions

Comment: Local officials should set policy regarding road standards for "low impact" subdivisions. Where parcels are created for seasonal use or where traffic volumes will be minimal, allowing roads to be built to lower standards may be appropriate. If these lower standards are acceptable, the standards should be noted on the final plat and on any instruments of conveyance.

Before incorporating reduced road standards for "low impact" subdivisions, local officials should consider potential problems. The responsible fire district might not be able to provide adequate fire protection services. Future development may result in increased traffic volume that would exceed the capacity of the lower standard roads. Lots that were created originally for seasonal use may be used on a year-round basis at a later date.

Local officials at least should require an easement of sufficient width that the roads can be upgraded to meet the higher standards of the local subdivision regulations if circumstances change in time.

Local officials have important decisions to make in order to find a balance between proper access and reasonable standards for subdivision roads that will have minimal traffic volumes. The suggested reduced road standards below are only a starting point for local jurisdictions to consider in drafting road standards for "low impact" subdivisions.

- a. When a "low impact" subdivision is situated where no further development or no future increase in traffic volume will occur, any or all of the following standards may be approved when deemed appropriate by the governing body:
 - (1) right-of-way width: level terrain – 40 ft; hilly terrain – 50 ft.
 - (2) road width: 20 ft.
 - (3) the requirement for all-season access is waived.
- b. When these standards are approved for a subdivision, the standards must be noted on the final plat and any instruments of conveyance

TABLE 3: CHART OF STEPS AND TIME PERIODS FOR REVIEW OF PRELIMINARY PLATS

DAY No.	"LOW IMPACT" MINOR SUBDIVISIONS	MINOR SUBDIVISIONS	MAJOR SUBDIVISIONS
	Initial contact; obtain local regulations	Initial contact; obtain local regulations	Initial contact; obtain local regulations
	Preapplication conference	Preapplication conference	Preapplication conference
	Submit Preliminary Plat Application; when complete, review period begins.	Submit Preliminary Plat Application; when complete, review period begins.	Subdivider submits Prel. Plat Application 30 days before planning board meeting; when application complete, review period begins.
1	On-site visit and review by subdivision administrator.	On-site visit and review by subdivision admin.	
5			
10	Subdivision administrator prepares written report and draft Findings of Fact.		Subdiv. Administrator schedules hearing for planning board meeting; publishes and mails notice of hearing;
15	Governing Body acts to approve, deny or conditionally approve subdivision.	Subdivision administrator prepares written report and draft Findings of Fact.	Subdiv. Administrator makes on-site visit; reviews application; makes staff report; drafts Findings of Fact;
20		Planning board reviews, makes recommendation.	
25		Governing Body acts to approve, deny or conditionally approve subdivision.	
35	Deadline: Action on minor subdivisions	Deadline: Action on minor subdivisions	Planning board holds public hearing; makes recommendation re: approval; drafts Findings of Fact.
40			
50			Governing Body acts to approve, deny or conditionally approve subdivision.
60			Deadline: Action on Prelim. Plat

IV. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section VIII-B, Variances. The governing body may not grant variances from the provisions of Section IV-A-4, Floodplain Provisions. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Chapters V, VI, VII of these regulations.

IV-A. General Standards

IV-A-1. Conformance

The design and development of a subdivision must conform with any adopted comprehensive plans and zoning regulations, and with health department and other regulations. Where no zoning regulations are in effect, maximum density and minimum lot size must be established in consultation with local and state health authorities.

IV-A-2. Natural Environment

The design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and must, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and natural vegetation.

IV-A-3. Lands Unsuitable for Subdivision

The governing body may find land to be unsuitable for subdivision because of potential hazards such as flooding, snow avalanches, rock falls, land slides, steep slopes in excess of 25 percent slope, high potential for wildfire, subsidence, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds or environmental degradation; or other features which may be detrimental to the health, safety, or general welfare of existing or future residents. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction plans.

IV-A-4. Floodplain Provisions

Land located in the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA, or land deemed subject to flooding as determined by the governing body shall not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health, or property.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. Survey data must comply with the Standards for Flood Hazard Evaluations as contained in Appendix F of these regulations. After the Floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the

subdivider must submit it to the planning board (or subdivision administrator) along with the Environmental Assessment required for the preliminary plat.

The governing body must waive this requirement where the subdivider contacts the Water Resources Division and that agency states in writing that available data indicated that the proposed subdivision is not in a flood hazard area.

IV-A-5. Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements or the subdivision required by the governing body must be prepared by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with the Montana Subdivision and Platting Act and these regulations.

IV-A-6. Lots

Each lot must contain a satisfactory building site and conform to health department regulations, zoning regulations, and these regulations.

- a. No single lot must be divided by a municipal or county boundary line.
- b. No single lot must be divided by a public road, alley or utility right-of-way or easement.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary means of access to a lot.
- d. Corner lots must have driveway access to the same street or road as interior lots.
- e. Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.
- f. No lot must have an average depth greater than three times its average width.
- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

IV-A-7. Blocks

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.

- c. Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.
- d. Rights-of-way for pedestrian walks, not less than ten feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

IV-A-8. Streets and Roads

a. Design

- 1) The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety, and in their relation to the proposed uses of the land to be served by them.
- 2) Roads in must meet the design specifications in Table 3.
- 3) Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design specifications set forth in Table 3.
- 4) All streets within a subdivision must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association.
- 5) Residential driveways must not have direct access to primary highways. Where no reasonable option is available, the Montana Department of Transportation may issue a road approach permit.
- 6) Local streets must be designed so as to discourage through traffic.
- 7) Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads, with a reservation prohibiting access along the rear property line, deep lots, or other treatment as may be necessary for adequate protection of residential properties and to separate arterial and local traffic.
- 8) Half streets are prohibited except where essential to the development of the subdivision and where the governing body is assured that it will be possible to require the dedication of the other half of the street when the adjoining property is subdivided. Wherever an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within such tract.
- 9) Horizontal alignment of streets must ensure adequate sight distances.

- 10) Intersections. The following items apply to intersections:
- a) streets must intersect at 90 degree angles, except when topography precludes, and in no case may the angle of intersection be less than 60 degrees to the center line of the roadway being intersected.
 - b) two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - c) no more than two streets may intersect at one point.
 - d) intersections of local streets with major arterials or highways must be kept to a minimum.
 - e) intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual roadways.
 - f) hilltop intersections are prohibited, except where no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited.
 - g) maximum grade of approach to major highways must not exceed five percent.
- 11) Names of new streets aligned with existing streets must be the same as those of the existing streets. Proposed street names must not duplicate or cause confusion with existing street names.

b. Improvements

- 1) All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body.
- 2) Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials, properly rolled, shaped and compacted and subject to approval by the governing body.
- 3) Streets and roads must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.
- 4) Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements, at least 60 feet wide, from each property owner or the appropriate administrator of public lands. Each easement must allow construction and perpetual maintenance of a road across the property and allow vehicular travel on the road.

Adequate and appropriate easements must be granted by each property owner through a signed and notarized document that grants the easement in conformance with a. Design, above (Appendix I contains a model road access easement).

The location of any road easement must be shown on the plat or on a supplemental

map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

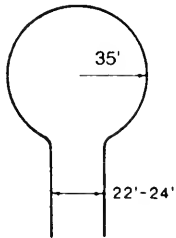
- 5) Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body.
- 6) Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the public improvements agreement.
- 7) Street or road signs and traffic control devices of the size, shape and height as approved by the governing body must be placed at all intersections by the developer or included as part of the public improvements agreement. Traffic control devices must be consistent with the "Manual on Uniform Control Devices" available from the Montana Department of Transportation.
- 8) If mail delivery will not be to each individual lot within the subdivision, the developer must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. Responsibility for maintenance may be included as part of the public improvements agreement.
- 9) An addressing system must be developed in conformance with the addressing requirements of the county.

TABLE 4: ROAD DESIGN STANDARDS FOR SUBDIVISIONS

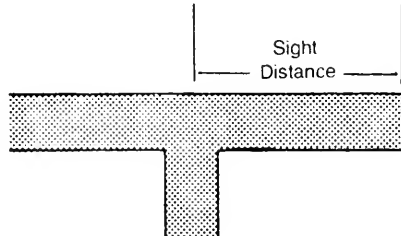
Comment: Local jurisdictions are encouraged to review these suggested design standards carefully and make any reasonable revisions to meet local circumstances relating to terrain and traffic volumes. Graphics on the following page illustrate a number of the requirements.

<u>Minimum Design Standards</u>	<u>Minor Collector</u>	<u>Local Road</u>
1. Minimum right-of-way width	60 ft.	
a. level terrain		50 ft.
b. hilly terrain		60 ft.
2. Minimum roadway width a/ "Low impact" subdivisions	26 ft.	24 ft. 20 ft.
3. Minimum curb radius or edge of pavement at intersections	25 ft.	15 ft.
4. Maximum grades b/	8%	9%
5. Approaches onto Public Roads		
a. minimum sight distance	200 ft.	150 ft.
b. minimum width	35 ft.	30 ft.
c. maximum grade for 20'	5%	5%
6. Curvature c/		
a. design speed	30 mph	20 mph
b. maximum curve	23	53.5
c. minimum radius	249 ft.	107 ft.
7. Cul-de-sacs/Turnarounds		
a. maximum road length	—	1000 ft.
b. cul-de-sac: minimum outside right-of-way radius	—	40 ft.
c. cul-de-sac: minimum outside roadway radius	—	35 ft.
d. "T" turnaround: backup lengths (2 required)	—	30 ft. each
8. New bridges		
a. curb-to-curb widths d/	26 ft.	24 ft.
b. design load capacity	20 tons	20 tons
c. vertical clearance	14.5 ft.	14.5 ft.

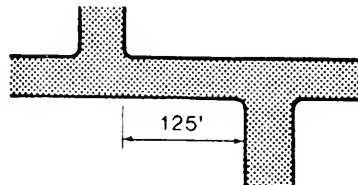
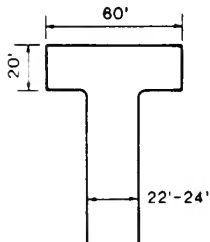
- a/ Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.
- b/ Grades over 10% must not exceed 100 feet in length.
- c/ Curvature is based on a superelevation of .08/ft.
- d/ Width of the bridge roadway surface should match the width of the roadway system it joins.



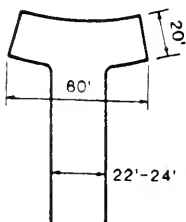
Cul-de-sac



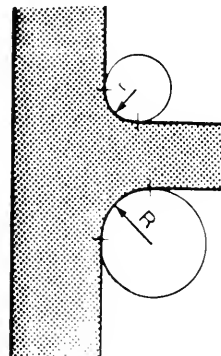
Sight Distance



Intersection Offset



"T" Turnaround



Curb Radius

Comment: Road Standards

The following comments offer some explanation for the purposes of a number of the road standards and the rationale for avoiding excessive standards. Local officials should confer with personnel in the local road department and with local fire authorities in setting road standards.

Right-of-way Widths

Road rights-of-way not only provide a corridor for the road, but provide space for the road slope and borrow area, cuts and fills, locating utilities, and holding plowed snow. An adequate right-of-way width is essential, but excessively wide rights-of-way wastes land that could be effectively used for development and removes land from the public tax base. Where easements are used for providing utilities (as required by the MSPA), the width of rights-of-way can be reduced.

Because hilly or mountainous terrain usually requires more cutting and filling during road construction, rights-of-way need to be wider than for roads on level terrain.

Road Widths

Each driving lane should be 10–11 feet wide to accommodate moving vehicles including trucks, motor homes, and camper trailers. A shoulder of 2 feet on each side of the road provides reasonable safety, thus a minimum road width of 24 feet is a reasonable standard. Roads could be wider for subdivisions with greater traffic volumes or where higher driving speeds are expected. Where on-street parking is allowed, an eight-foot parking lane is added to the width of the driving lane.

Requiring wider roads without reasons relating to traffic volumes and safety are more costly to build and maintain, and wide roads encourage higher speeds, which usually are not compatible with residential areas.

Cul-de-sacs/Turnarounds

Circular cul-de-sacs are the traditional means of allowing vehicles to turn around at the end of street. Cul-de-sacs of 40 feet or greater create large, unattractive expanses of pavement that are expensive to build and maintain, and contribute unnecessarily to storm water run-off. A 35-foot radius is adequate for cul-de-sacs in residential subdivisions. Fire trucks, ambulances, moving vans, garbage trucks and snow plows can make the turn with one backing movement. Most of these vehicles use residential streets infrequently, and in most cases attending personnel can help guide the driver with backing movements.

The "T" turnaround is a practical alternative that uses about 1/6 the land area as does a typical cul-de-sac. Also, "T" turnarounds avoid the awkward pie-shaped lots often associated with cul-de-sacs. Each leg of the "T" turnaround should be 30 feet long, and parking restrictions are necessary.

IV-A-9. Drainage Facilities

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size also must meet the minimum drainage standards of the Montana Department of Health and Environmental Sciences.
- b. Curbs and gutters or swales must be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities.
- c. Culverts or bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street right-of-way or easement. All culverts must extend at least across the entire width of the base of the fill; the amount of backfill to be placed over the culvert and the culvert's capacity must be determined by a registered engineer. This must include arrangements for driveway culverts.
- d. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body.
- e. Each culvert or other drainage facility must be large enough to accommodate potential run-off from upstream drainage areas.
- f. Drainage systems must not discharge into any sanitary sewer facility.
- g. The grading and drainage system must be designed and certified by a registered engineer.
- h. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat.

IV-A-10. Water Supply Systems

- a. All water supply systems must be subject to approval of the Governing body. Subdivision lots less than 20 acres in size also must meet the minimum standards of the Montana Department of Health and Environmental Sciences.
- b. The water supply system must be subject to approval by the governing body which may require that any proposed central system provide adequate and accessible water for fire protection.
- c. Where the subdivision is within the service area of a public water supply system, the subdivider must install complete water system facilities in accordance with the requirements of the jurisdiction involved and the Montana Department of Health and Environmental Sciences. The subdivider must submit plans and specifications for the proposed facilities to

the jurisdiction involved and to the Montana Department of Health and Environmental Sciences, and must obtain their approvals prior to undertaking any construction.

IV-A-11. Sewage Treatment Systems

- a. All sewage treatment systems must be subject to the approval of the governing body. Subdivision lots less than 20 acres in size also must meet the minimum standards of the Montana State Department of Health and Environmental Sciences.
- b. Where the subdivision is within the service area of a public sanitary sewer system, the subdivider must install complete sanitary sewer system facilities in accordance with the requirements of the jurisdiction involved and the Montana Department of Health and Environmental Sciences. The subdivider must submit plans and specifications for the proposed facilities to the jurisdiction involved and to the Montana Department of Health and Environmental Sciences, and must obtain their approvals prior to undertaking any construction.

IV-A-12. Solid Waste

The subdivider must assure that provisions for collection and disposal of solid waste meet the regulations and minimum standards of the Montana Department of Health and Environmental Sciences. The means for solid waste collection and disposal must be subject to approval by the governing body.

IV-A-13. Utilities

- a. The subdivider must provide adequate and appropriate easements for the construction of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in the street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Such underground facilities must be installed after the street has been brought to grade and before it is surfaced, to eliminate so far as practicable the necessity for disturbing such surfacing for the connection of individual services.
- c. Overhead utility lines must be located at the rear property line, where practical.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider, subject, however, to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities.
- e. Utility easements must be centered along side and rear lot lines wherever necessary, and, if placed in the street, be located between the roadway and the right-of-way line.
- f. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body.

- g. Where a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

IV-A-14. Water Course Easements

Where a subdivision is traversed by a watercourse, drainage way, channel, ditch, or stream, easements or rights-of-way may be required to parallel the lines of such watercourse at a sufficient width to allow for maintenance. A minimum width of 10 feet is required on each side of irrigation canals for maintenance purposes.

IV-A-15. Park Land

- a. A plat of a residential subdivision must show that one-ninth (1/9) of the combined area of lots five acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.
- b. Where, because of size, topography, shape, location or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided unimproved land. Such cash donation must be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.
 - 1) Where cash has been accepted in lieu of land dedication, the amount of cash donation must be stated on the final plat.
 - 2) Where cash has been accepted in lieu of land dedication, the governing body must record in the minutes of the hearing upon the proposed subdivision why the dedication of land for parks and playgrounds was undesirable.
 - 3) The fair market value must be determined as of the date of submission of the preliminary plat.
 - 4) It must be the responsibility of the subdivider to provide satisfactory evidence of the fair market value. When the subdivider and the governing body are unable to agree

upon the fair market value, the governing body may require that the fair market value be established by an appraisal conducted by a qualified real estate appraiser of its choosing. The appraisal fee must be the responsibility of the developer.

- c. The park dedication and cash-in-lieu requirements of subsections (a) and (b) do not apply to any division that creates only one additional lot.
- d. If a tract of land is being developed under single ownership as a part of an overall development plan, and part of the tract has been subdivided and sufficient park lands have been dedicated or cash donated in lieu from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body must issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.
- e. The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five acres and that all parcels in the subdivision will be used for single family dwellings (sample covenant in Appendix G).
- f. The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association must equal the amount that would otherwise have been dedicated to public use.
- g. All subdivisions must be considered to be residential subdivisions and park requirements must be satisfied unless there are adopted zoning restrictions or covenants which prohibit residential development or it can be shown that the subdivider has immediate plans for non-residential development.

IV-A-16. Fire Protection

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. In setting standards, local officials should consult the Uniform Fire Code, International Fire Code Institute, 1991, and local fire codes. Measures must include:

- a. The placement of structures in such a manner so as to minimize the potential for flame spread and to permit efficient access for fire fighting equipment.
- b. The presence of adequate fire fighting facilities on site, including an adequate water supply and water distribution system to fight fires on site.
- c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

IV-A-17. Special Standards for Subdivisions Proposed in Areas of High Fire Hazard

High fire hazard areas include heads of draws, excessive slopes, dense forest growth or other hazardous wildfire components. For subdivisions proposed in areas subject to high wildfire hazard as determined by the local fire protection authority, U.S. Forest Service or the Forestry Division of the Montana Department of Lands, the following standards apply (also see the Uniform Fire Code International Fire Code Institute, 1991, and the Fire Protection Guidelines for Wildland Residential Interface Development, Montana Department of State Lands):

- a. At least two entrance–exit roads must be provided to assure more than one escape route for residents and access routes by fire fighting vehicles.
- b. Road right-of–way must be cleared of slash.
- c. Bridges must be built to a design load of 20 tons, and constructed of non–flammable materials.
- d. Building sites must be prohibited on slopes greater than 25 percent and at the apex of "fire chimneys" (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. Densities in areas of steep slopes or dense forest growth must be reduced through minimum lot standards as follows:

<u>% Slope</u>	<u>Minimum Lot Size (Acres)</u>	
	<u>Open Grass</u>	<u>Forest & Brush</u>
0–10	1	2
10–20	2	3
20–25	3	4
over 25	5	not permitted

- f. Open space, park land and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- g. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by (the appropriate local fire protection authority).*

* In absence of such standards, a water supply of sufficient volume for effective fire control must at a minimum provide as follows:

- a. A central water system with a minimum flow of 1,000 gallons per minute;
- b. Where no central water system exists, cisterns, reservoirs or fill ponds must be provided at appropriate locations:
 - (1) For single dwelling units: minimum capacity of 2,500 gallons;
 - (2) For 6 or more dwelling units: minimum capacity of 500 gallons per dwelling unit.

V. SUBDIVISIONS CREATED BY RENT OR LEASE

Comment: The MSPA defines lots that are rented or leased and mobile home and recreational vehicle parks as subdivisions. The provisions below set forth review procedures and design standards for various types of subdivisions created by rent or lease.

V-A. Procedures for Review

V-A-1. Definition

A subdivision created by rent or lease, including a mobile home or recreational vehicle park, is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common).

V-A-2. Review and Approval

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased. The subdivider shall submit a completed application form and a preliminary plat of the proposed development. Approval will be based upon the primary review criteria in Section II-B-4 Preliminary Plat Approval, page 7 of these regulations. Subdivisions created by rent or lease shall be reviewed under preliminary plat procedures contained in Sections II-A and II-B of these regulations.

V-A-3. Improvements

Before any portion of a rental or lease subdivision may be rented or leased the subdivider shall have installed all required improvements. Preliminary plans, profiles, tentative grades and specifications for proposed improvements shall be submitted to the governing body for its approval prior to the construction of improvements. The governing body may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications.

V-A-4. Summary Review

Where a rental or lease subdivision qualifies as a minor subdivision, it may receive summary review as provided for in Section III-A Minor Subdivisions of these regulations.

V-A-5. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix B, Preliminary Plat Form, Contents, and Supplements. The plan shall show the lot layout and the typical location of the mobile home, recreational vehicle, or other unit on the lot. The subdivider shall submit the plan to the planning board review committee (or subdivision administrator). The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the (office of the city clerk, clerk and

recorder, planning or other).

V-A-6. DHES License

Mobile home and recreational vehicle parks are required to be licensed by the Montana Department of Health and Environmental Sciences under the provision of Title 50, Chapter 52, MCA.

V-B. Design Standards for Subdivisions Lots Created by Rent or Lease

V-B-1. Design Standards

Subdivisions created by rent or lease of lots for conventional housing must comply with the provisions of Section IV, Design and Improvements Standards.

V-B-2. Additional Provisions

The governing body may require provision for:

- a. Storage facilities on the lot or in compounds located within a reasonable distance.
- b. A central area for storage or parking of boats, trailers, or other recreational vehicles.
- c. Landscaping or fencing to serve as a buffer between the development and adjacent properties.
- d. An off-street area for mail delivery.
- e. Street lighting.

V-C. Mobile Home Park Standards

V-C-1. Mobile Home Lots

- a. Mobile home lots must be arranged to permit the safe and practical placement and removal of mobile homes.
- b. All mobile homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- c. The mobile home pad must be located at least 10 feet from the street that serves it.
- d. The size of the mobile home pad must be suitable for the general market to be served and must fit the dimensions of mobile homes anticipated.
- e. A mobile home pad may not occupy more than one-third (1/3) of the area of its lot. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a lot.

- f. The governing body may require that the mobile home stand be improved to provide adequate support for the placement and tie-down of the mobile home.
- g. No mobile home nor its attached structures, such as awning or carports, may be located within 20 feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, may be located within five feet of any mobile home or its attached structures.
- i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home lot. The driveway must be located to allow for convenient access to the mobile home, and be a minimum of 10 feet wide.
- j. One guest parking space for each ten mobile home lots must be provided. Group parking may be provided.
- k. The limits of each mobile home lot must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground must be approximately the same as shown on the acceptable plans. The degree of accuracy obtainable with an engineer's scale and a tape is acceptable. Precise engineering of lot limits is not required either on the plans or on the ground.
- l. Each mobile home must be skirted within 60 days after said mobile home is moved upon a lot within the mobile home park. Said skirting must be of a fire-resistant material similar to that of which the mobile home exterior is constructed and attached to the mobile home.

V-C-2. Streets

Streets within a mobile home park must meet the design standards specified in Section IV-A-8 Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

V-C-3. Electrical Systems

Electrical system installation must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

V-C-4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the appropriate provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).

- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquified petroleum gas container.
- c. Each mobile home lot must have an accessible, listed gas shutoff installed. Such valve must not be located under a mobile home. Whenever the mobile home lot outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

V-D. Recreational Vehicle Park Standards

V-D-1. Recreational Vehicle Spaces

- a. Spaces in recreational vehicle parks must be arranged to permit safe parking and removal of recreational vehicles.
- b. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- c. All recreational vehicle spaces must be located at least 25 feet from a public street or highway right-of-way.

V-D-2. Streets

- a. Streets must be designed to provide safe access to public roads, including approaches with sufficient width to allow safe turning onto public roads.
- b. Roads within the recreational vehicle park must be designed to provide safe parking and removal of recreational vehicles, and safe circulation within the park.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

V-D-3. Density

The density must not exceed 25 recreational vehicle spaces per acre of gross site area.

VI. PLANNED UNIT DEVELOPMENTS

VI-A. Intent

The intent of this section is to provide flexibility in certain subdivision standards, allowing the subdivider creativity in subdivision design using a concept which clusters development to promote economies in providing services while preserving and enhancing open space and unique natural features. The Planned Unit Development (P.U.D.) concept promotes the planning of a tract of land to allow for a single use, such as residential or for a harmonious combination of uses, such as a mixture of residential and commercial.

VI-B. Designation as P.U.D.

VI-B-1. Obtain Designation

The development must be in compliance with P.U.D. provisions in local zoning regulation. Where such provisions do not exist, the proposed subdivision must be designated as a P.U.D. by the planning board before being reviewed under this Section. To obtain designation of a subdivision as a P.U.D., the subdivider, before submitting a preliminary plat application, shall submit to the planning board (or subdivision administrator) the following:

- a. A written request that the plan of the proposed subdivision is to be reviewed as a P.U.D.
- b. A layout plan showing the proposed location and use of lots and structures, and the location and number of parking spaces, if appropriate.
- c. a sketch plan of the proposed subdivision, containing all information requested in Section II-A-3, Pre-application Procedures.
- d. A description of open space, recreational facilities, roads and other facilities proposed to be under common ownership.
- e. Proposed restrictive covenants, if any.
- f. A description of proposed forms for property ownership within the development.
- g. A statement describing measures to be taken to assure permanence and maintenance of open space and other facilities to be held in common ownership.
- h. A schedule showing street and utility improvement completion dates.
- i. A description of all proposed modifications from the Design and improvement Standards, Section IV.
- j. Any additional reasonable information that the planning board may require.

VI-B-2. Criteria for Designation

The planning board shall review the information and proposed plan and, before designating the subdivision a P.U.D., shall determine that the development plan promotes the clustering of individual building sites, conforms to the definition and intent of this section, and does one or more of the following:

- a. Preserves to the maximum extent possible the natural characteristics of the land including topography, vegetation, streams and other bodies of water.
- b. Provides economies in the provision of roads and other public improvements.
- c. Preserves productive agricultural land, open space, or riparian areas.
- d. Protects areas of important wildlife habitat or important historic sites or structures.
- e. Provides developed facilities for recreational purposes.

VI-B-3. Notification of Subdivider

The planning board shall review the plan and within 10 days of the planning board meeting, write a letter to the subdivider stating that the plan has or has not been designated a P.U.D. If designation as a P.U.D. is disapproved, the reasons for disapproval shall be stated in the letter.

VI-B-4. Designation is not Approval

Designation as a P.U.D. does not constitute approval of the specific details or modifications proposed by the plan.

VI-C. Procedures

If the governing body designates the development plan a P.U.D., the preliminary plat may be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:

- II-A. Subdivision Review and Approval Procedures,
- II-B. Preliminary Plats,
- II-C. Final Plats.

VI-D. Standards

VI-D-1. Design Standards

P.U.D.'s must comply with the standards contained in Section IV-A General Design and Improvement Standards, except that the governing body may modify the design and improvement standards contained in Section IV-A-6 Lots, Section IV-A-7 Blocks, Section IV-A-8 Streets and Roads, and Section IV-A-15 Park Requirements upon request of the subdivider where the plan for

a P.U.D. includes provisions for efficient traffic circulation, adequate light, air and open space where such standards are not practical or reasonable in respect to the overall P.U.D. subdivision design. In such cases, no application for a variance under Section VIII-B Variances of these regulations is necessary.

VI-D-3. Determining Overall Density

In those areas where no zoning exists, the planning board shall determine, in consultation with the subdivider, the overall dwelling unit density.

VI-D-4. Streets

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets to topographical conditions and to public convenience and safety.

VI-D-5. Open Space

Each planned unit residential development must provide at least one-ninth (1/9) of the platted area, exclusive of all other dedications, for common open space. The open space must be:

- a. Held in common ownership by a property owners' association; or
- b. Dedicated to public use, if acceptable to the governing body; or
- c. A combination of "a" or "b" above.

The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owner's association for the proposed subdivision and the deed to the association land to be held in perpetuity for use as parks or playgrounds.

VII. CONDOMINIUMS

VII-A. Procedures

All condominium developments are subdivisions subject to the terms of the Montana Subdivision and Platting Act as follows:

VII-A-1. Exemption from Review

The construction of condominium buildings or installation of related public improvements is not subject to subdivision review and approval procedures if the condominiums or improvements are to be constructed in a subdivision approved and filed after July 1, 1973, and if the approval of the subdivision was based on the anticipated construction of the condominiums and improvements.

VII-A-2. Review Where No Division

Where no division of land is created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Chapter V, Procedures for Subdivisions Created by Rent or Lease, with the following exception: in lieu of the completion of all required improvements before final approval is given, the subdivider may enter into a subdivision improvements agreement pursuant to Section II-C-5 Public Improvements Agreement; Guaranty.

VII-A-3. Land Divisions in Condominium Subdivisions

Where divisions of land take place in a condominium subdivision, the subdivision must be reviewed under the procedures contained in Sections:

- II-A Subdivision Review and Approval Procedures,
- II-B Preliminary Plats,
- II-C Final Plats.

VII-B. Standards

VII-B-1. Design Standards

Condominium developments must comply with those standards contained in Section IV, Design and Improvement Standards, which the governing body deems applicable.

VII-B-2. DHES Compliance

Condominium developments must meet the minimum standards of the Montana Department of Health and Environmental Sciences.

VII-B-3. Unit Ownership Act

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA.

VIII. ADMINISTRATIVE PROVISIONS

VIII-A. Fee Schedule

VIII-A-1. Preliminary Plat Review

To cover costs of reviewing plans, advertising, holding public hearings, or other expenses incidental to the approval of a subdivision, the subdivider shall pay a non-refundable fee at the time of application for the approval of a preliminary subdivision plat. The fees, payable to the county (or city) treasurer or planning department, are as follows:

<u>Number of Lots</u>	<u>Fee</u>
1-5 (minor subdivisions)	\$300.00
6 or more (major subdivisions)	\$400.00 plus \$5.00 per lot

Comment: These fee schedules are based upon review fees typically charged by jurisdictions throughout Montana, and are intended to serve as a guideline. The governing body should develop and adopt fee schedules based on actual subdivision review and processing costs. While costs vary between different jurisdictions, typical cost components include staff time, letters to landowners, and publication of notices of hearing, when required.

VIII-A-2. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials the subdivider shall pay a non-refundable fee at the time of application for final approval to the county (or city) treasurer or planning department at the following rate:

\$100 plus \$5 per lot

VIII-A-3. Final Plat Filing

To cover the cost of filing the final plat and supplementary documents such as restrictive covenants, deeds, etc., Sections 7-4-2632 and 7-4-2651, MCA, provide that the following fees must be paid by the subdivider to the county clerk and recorder:

1 or more lots \$5.00 plus \$.50 per lot up to and including 100 lots; plus \$.25 per lot for each additional lot in excess of 100; plus \$2.00 per page.

VIII-A-4. Final Plat Amendment or Correction

The property owners petitioning for the amendment or correction of a filed subdivision plat shall pay

all related direct costs incurred by the governing body, including filing fees according to the above final plat filing fee schedule.

VIII-B. Variances

VIII-B-1. Variances Authorized

The governing body may grant variances from Chapter IV, Design and Improvement Standards, of these regulations when, because of the particular physical surroundings, shape, or topographical conditions of a specific property, strict compliance would result in undue hardship and when it would not be essential to the public welfare. Such variances must not have the effect of nullifying the intent and purpose of these regulations. The governing body shall not approve variances unless it makes findings based upon the evidence in each specific case that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of these regulations is enforced;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or comprehensive plan.

VIII-B-2. Variances from Floodway Provisions Not Authorized

The governing body may not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

VIII-B-3. Variances for Innovative Energy Savings Authorized

An innovative energy saving proposal which does not circumvent the purpose of these regulations may be reason for granting of a variance by the governing body.

VIII-B-4. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing the requested variance and the facts of hardship upon which the request is based. The planning board and governing body shall consider each requested variance at the public meeting or hearing on the preliminary plat.

VIII-B-5. Conditions

In granting variances, the governing body may impose such conditions as will, in its judgment, secure substantially the objectives of these regulations.

VIII-B-6. Statement of Facts

When any such variance is granted, the motion of approval of the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

VIII-C. Amendment of Regulations

Before the governing body amends these regulations it shall hold a public hearing and shall give public notice of its intent to amend these regulations and of the public hearing by publishing notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 days nor more than 30 days prior to the date of the hearing.

VIII-D. Administration

VIII-D-1. Enforcement

Every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the Montana Subdivision and Platting Act and these regulations. The cost of such action shall be imposed against the party not prevailing.

VIII-D-2. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the Montana Subdivision and Platting Act or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the Montana Subdivision and Platting Act or these regulations shall be deemed a separate and distinct offense.

VIII-D-3. Appeals

A decision of the governing body approving or rejecting a proposed subdivision plat may be reviewed by the district court. The application must specify the grounds upon which it alleges the illegality of the action of the governing body.

APPENDIX A

PRELIMINARY SUBDIVISION PLAT APPLICATION FORM

1. Name, address and telephone number of landowner and representative, if any (eg: engineer, surveyor).
2. Name of development, if any _____
3. Location (City or County) _____

Legal Description: _____

4. Descriptive Data:
 - a. Total area in acres _____
 - b. Number of lots or rental spaces _____
 - c. Minimum and maximum sizes of lots or spaces _____

Indicate the proposed use(s) and number of lots or spaces in each:

- _____ Residential, single family
- _____ Residential, multiple family
- _____ Types of multiple family structures and numbers of each (e.g.: duplex, four-plex)
- _____ Planned Unit Development (No. of units _____)
- _____ Condominium (No. of units _____)
- _____ Recreational or Second Home
- _____ Mobile Home Park
- _____ Recreation Vehicle Park
- _____ Commercial or Industrial
- _____ Other (please describe) _____

5. Physical Conditions:

Provide the following information regarding the development:

- a. Current land use _____
 - b. Existing zoning or other regulations _____
 - c. Depth to ground water at time of year when water table is nearest the natural ground surface within the drainfield area _____
 - d. Depth to bedrock or other impervious material in the drainfield area _____
6. List of materials submitted with this application:
 - a. Copies of preliminary plat _____
 - b. Vicinity sketch _____
 - c. Contour map _____
 - d. _____
 - e. _____
 - f. _____
 - g. _____
 - h. _____

I hereby affirm that all the statements and information contained herein and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the (governing body) of (city or county) for approval of the preliminary plat for (name of subdivision) Subdivision.

Subdivider or Agent

The DHES/Local Government Joint Subdivision Application Form (Appendix C) may be used in place of this application.

PRELIMINARY PLAT REVIEW CHECKLIST

Name of Subdivision _____

Location _____

(Section, Range, Township, and Quarter-Section)

Name, Address and Telephone Number of Subdivider.

CHECKLIST

Yes No

1. Complete preliminary plat application.

2. Required number of plats and supplements
submitted.

3. Filing fee paid.

4. Subdivision name duplicates other.

5. Correct preliminary plat size.

6. Preliminary plat contains on the face of the
plat or on separate sheets referenced on the
face of the plat:

a. Title block:

(1) Name of subdivision.

(2) Location

(3) Scale.

(4) North arrow.

(5) Date of preparation.

b. The approximate exterior boundaries of
the platted tract

- c. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
- d. All lots and blocks, designated by numbers, and the approximate dimensions and area of each lot
- e. All streets, alleys, avenues, roads and highways, and the width of the right-of-way of each with existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways.
- f. Physical access to the subdivision and each lot that meets the road standards set forth in the local regulations.
- g. Legal access providing vehicular travel from a city, county or state road to the subdivision, including adequate and appropriate easements, if necessary
- h. The approximate location, boundaries, dimensions and areas of all parks, common grounds, and other grounds dedicated for public use.
- i. Any existing and proposed utilities located on and adjacent to the tract including:
 - (1) The approximate location, size and depth of sanitary and storm sewers . .
 - (2) The approximate location, size and depth of water mains and fire hydrants
 - (3) The approximate location of gas, electric and telephone lines, and street lights.
 - (4) The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the tract.

- j. Ground contours provided according to United States Geological Survey data or other information
- k. The approximate location of any existing buildings, structures and improvements.
- l. The approximate location and identification of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-way, including description of their width and purpose.

7. Preliminary plat supplements including:

- a. A vicinity sketch or sketches showing conditions on adjacent land including:
 - (1) The names of adjoining platted subdivisions and numbers of adjoining certificates of survey previously recorded
 - (2) The ownership of all lands adjacent to the subdivision and to any access road leading from a present public right-of-way to the boundary of the proposed subdivision.
 - (3) Any existing or proposed easement documents that would establish legal access
 - (4) Location of any buildings, railroads, power lines, towers, roads and other nearby land uses.
 - (5) Any existing or proposed zoning
- b. A current U.S. Geological Survey topographic map, an aerial photograph, or a location map of the largest scale available, with an outline of the subdivision clearly indicated thereon.
- c. When a tract of land is to be subdivided in phases, an overall development plan indicating the subdivider's intentions for the development of the remainder of the tract.

		Yes	No
d.	Drafts of any covenants and restrictions to be included in deeds or contracts for sale		
e.	If common property is to be deeded to a property owners' association, the subdivider filed a draft of the covenants and restrictions that will govern the association. These covenants and restrictions must at a minimum, provide that:		
	(1) The property owners' association will be formed before any property is sold.		
	(2) Membership is mandatory for each property buyer and any subsequent buyer		
	(3) The reservation of the common property will be perpetual		
	(4) The association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities.		
	(5) Property owners' must pay their pro rata share of the cost and the assessment charged by the association can become a lien on individual parcels.		
	(6) The association may adjust assessments to meet changing needs.		
f.	An environmental assessment of the proposed subdivision, when required		
g.	Floodway survey data, when required.		

APPENDIX B

PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS

1. Preliminary Plat Form

A legible preliminary plat shall be submitted at a scale sufficient to minimize the number of sheets in order to maintain clarity and shall be on one or more sheets either 18 x 24 or 24 x 36 inches in size.

2. Preliminary Plat Contents

The preliminary plat submitted for approval shall show or contain on the face of the plat or on separate sheets referenced on the face of the plat the following information. A current topographic map, an aerial photograph or a location map of the largest scale available, with an outline of the subdivision clearly indicated thereon may be used to provide the information required below and in Preliminary Plat Supplements:

- a. Name and location of the subdivision, scale, scale bar, north arrow, and date of preparation.
- b. The approximate exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the Subdivision boundary. If available, a metes and bounds or other legal description, or copy of previously recorded certificate of surveys or subdivision plats, would be submitted.
- c. All lots and blocks, designated by numbers, and the dimensions and area of each lot.
- d. All streets, alleys avenues, roads and highways, and the width of the right-of-way grades and curvature of each, existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways.
- e. The approximate location, boundaries, dimensions and areas of any parks, common grounds, or other grounds dedicated for public use.
- f. Any existing and proposed utilities located on or adjacent to the tract including:
 - 1) The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
 - 2) The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the tract.
 - 3) The approximate location of gas, electric and telephone lines, and street lights.
- g. The approximate location of existing building, structures and improvements.
- h. The approximate locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose.

- i. Ground contours shall be provided for a 200' x 200' area that includes the building site of any primary structure according to the following requirements:

Where average slope is

Contour intervals shall be

Under 10%	2 feet
10% or greater	5 feet

- ii. Ground contours for the remainder of the parcel shall be 20 feet, (a 7 1/2 minute U.S.G.S. topographic map may be used if available).

3. Preliminary Plat Supplements

The following shall be supplied and considered part of the preliminary plat:

- a. A vicinity sketch or sketches showing conditions on adjacent land including:
 - 1) The names of platted subdivisions and numbers of certificates of survey previously recorded.
 - 2) The ownership of lands adjacent to the exterior boundaries of the subdivision and to any access road leading from a present public right-of-way to the boundary of the proposed subdivision.
 - 3) Location of any buildings, railroads, power lines, towers, roads, and other land uses.
 - 4) Any existing or proposed zoning.
 - 5) Lands separated from the exterior boundary of the subdivision by public or private rights-of-way are deemed to be adjacent for the purpose of this requirement.
- b. Lists of the names and addresses of owners of record of adjacent property.
- c. Copies of easements or proposed easements to provide legal access to the subdivision.
- d. When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating intent for the development of the remainder of the tract.
- e. Drafts of any covenants and restrictions to be included in deeds or contracts for sale.
- f. If common property is to be deeded to a property owners' association, the subdivider shall submit a draft of the covenants and restrictions which will govern the association. These covenants and restrictions shall be in accordance with the requirements contained in Section II-C-5, Guaranty of Public Improvements.
- g. A complete grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of streets and drainage improvements.
- h. Drafts of public improvements agreement and guaranty.
- i. An environmental assessment unless the subdivider has been exempted under the provisions of Section II-B-6. Appendix D provides the format of the assessment and questions to be addressed by the subdivider.

APPENDIX C

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES/LOCAL GOVERNMENT JOINT APPLICATION FORM

Comment: The Montana Subdivision and Platting Act gives subdividers the discretion to submit a DHES/Local Government Joint Application Form in place of a Preliminary Plat Application Form, and to request concurrent subdivision review by the DHES and local government. Few subdividers desire concurrent review, but the Joint Form provides good information for local officials whether or not the subdivider requests concurrent review. Part I contains application information needed by both local government and the DHES. Part II contains information regarding sanitation facilities that is needed both by the DHES and as part of an environmental assessment.

PART I. GENERAL DESCRIPTION AND INFORMATION

1. Name address and telephone number of landowner, and representative, if any (e.g.: engineer, surveyor).

2. Name of proposed development _____

3. Location (City and/or County)

1/4 Section _____ Township _____ Range _____

For proposed amended plats:

Name of subdivision _____

Lot #(s) _____ Block #(s) _____

4. Is concurrent review by the local governing body and DHES requested?

Yes _____ No _____

5. Descriptive Data:

- a. Number of lots or rental spaces _____
- b. Total acreage in lots _____
- c. Total acreage in streets or roads _____
- d. Total acreage in parks, open space, and/or
common facilities _____

- e. Total gross acreage of subdivision _____
- f. Minimum size of lots or spaces _____
- g. Maximum size of lots or spaces _____

Indicate the proposed use(s) and number of lots or spaces in each:

Residential, single family _____
 Residential, multiple family _____
 Types of multiple family structures and numbers of each
 (e.g.: duplex, 4-plex) _____
 Planned Unit Development (No. of Units _____)
 Condominiums (No. of Units _____)
 Mobile Home Park _____
 Recreational Vehicle Park _____
 Commercial or Industrial _____
 Other (please describe) _____

Provide the following information regarding the development:

- a. Current land use _____
- b. Existing zoning or other regulations _____
- c. Depth to groundwater at the time of year when water table is nearest to the natural ground surface within the drainfield area _____
- d. Depth to bedrock or other impervious material in the drainfield area _____
- e. A general description of the type of systems for water supply, sewage treatment and solid waste disposal.
- f. An overall development plan indicating the intent for the development of the remainder of the tract, if a tract of land is to be subdivided in phases.
- g. Drafts of any covenants and restrictions to be included in deeds or contracts for sale.
- h. Drafts of homeowners' association bylaws and articles of incorporation, if applicable.*

* Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DHES to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DHES can issue final approval.

PART II. REQUIRED INFORMATION FOR APPROVAL OF SANITARY FACILITIES UNDER SANITATION IN SUBDIVISION LAW

A. PHYSICAL CONDITIONS

Provide the following attachments:

- a. A vicinity map showing the location of the proposal relative to the nearest town, highway or street system.
- b. Map of soil types or soils survey, and if available, interpretation of soil suitability for the proposed land uses.
- c. Topographic map of the development with contour intervals meeting the preliminary plat requirements of the local subdivision regulations.
- d. On one or more copies of a preliminary plat* (a minor subdivision plat, if applicable) prepared in accordance with local subdivision regulations, or a final plat, showing the location of:
 - 1) any rock outcroppings.
 - 2) any areas subject to flood hazard, or if available, 100 year floodplain studies. (The Floodplain Management Section of the Water Resources Division of the Department of Natural Resources and Conservation may be contacted for assistance in determining flood hazard locations.)
 - 3) any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicated the names, sizes and present use of each).
 - 4) any man-made water systems such as canals, ditches, aqueducts, reservoirs and irrigation systems (also indicate the names, sizes and present use of each).
 - 5) any existing or proposed utilities located within or adjacent to the subdivision, including: electrical power, natural gas, telephone service.

B. WATER SUPPLY

1. Where an individual water supply system is proposed for each parcel:
 - a. Indicate the distance to the nearest public water system.
 - b. If wells or springs are to be used, provide evidence that ground water supply meets DHES standards for quantity, quality and dependability (e.g.: well logs, chemical analyses). Where acceptable tests cannot be conducted, a hydrogeological report, which substantiates adequate quantity and quality of the water supply shall be submitted.
 - c. If cisterns are to be used:
 - 1) explain why cisterns are proposed.
 - 2) identify the source of water supply and provide evidence that it is of sufficient quantity and quality to serve the development.
 - 3) explain what provisions will be made for sanitary hauling of water.
 - d. Attach two copies of the plat showing the proposed location of each spring, well or cistern and indicating the distance to existing or proposed sewage disposal systems.

2. Where a public or multiple-family water system is proposed:

- a. Estimate the number of gallons per day required by the development when fully developed (include required volume for domestic, fire protection and irrigation use if applicable).
- b. Where an existing system is to be used:
 - 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
 - 2) indicate the system's capacity to handle additional use and its distance from the development.
 - 3) provide evidence that permission to connect has been granted.
 - 4) provide two copies of the following attachments:
 - a) map or plat showing location and sizes of any existing water supply lines and facilities which may directly serve parcels within the proposed development.
 - b) engineering plans and specifications for all proposed extensions and additional lines and facilities. (In applying for DHES review, plans must be in sufficient detail to indicate sizes of lines and facilities and the capacity of the system. Complete plans and specifications must be submitted for final approval by DHES.)
- c. Where a new system is to be used:
 - 1) provide evidence that the water supply is adequate in quantity, quality and dependability.
 - 2) indicate who will install the system, who will bear the costs, when it will be completed and who will own and maintain the system.
 - 3) provide two copies of the following as attachments:
 - a) a plan for operation and maintenance of the system.
 - b) engineering plans and specifications for the system. (When applying for DHES review, plans must be in sufficient detail to indicate sizes of lines and facilities and the capacity of the system. Complete plans and specifications must be submitted for final approval by DHES.)

C. SEWAGE TREATMENT

1. Where individual sewage treatment systems are proposed for each parcel:

- a. Indicate the distance to the nearest public sewage disposal system.
- b. Provide as attachments:
 - 1) two copies of the plat which show the proposed suitable location on each lot for a septic tank, a subsurface treatment system and a 100% replacement area for the subsurface treatment system. Show the location of neighboring wells and subsurface treatment systems and the distances to each.
 - 2) the results of percolation tests performed on each lot in the area of the proposed drainfield in accordance with DHES Bulletin 332. Each test hole shall be keyed by a number on a map of the report.
 - 3) a detailed soils description or map. If a soils description is not available or if high

ground water or impervious layers are suspected, provide soils profile showing solid strata from test holes at least 7 feet in depth in the drainfield area. (Note: all major subdivisions require the 7 foot test holes.)

2. For a proposed public or multiple family sewage treatment system:

- a. Estimate the average number of gallons of sewage generated per day by the development when fully developed.
- b. Where an existing system is to be used:
 - 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
 - 2) indicate the system's capacity to handle additional use and its distance from the development.
 - 3) provide evidence that permission to connect has been granted.
 - 4) provide two copies of the following attachments:
 - a) a map or plat showing the location, sizes and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development.
 - b) engineering plans and specifications for all proposed extensions and additional lines and facilities. (In applying for DHES review plans must be in sufficient detail to indicate sizes of lines and facilities and the capacity of the system. Complete plans and specifications must be submitted for final approval by DHES.)
- c. Where a new system is proposed:
 - 1) indicate who will install the system, who will bear the costs, when it will be completed and who will own it.
 - 2) provide two copies of the following as an attachment:
 - a) engineering plans and specifications for the proposed system. (When applying for DHES review plans must be in sufficient detail to indicate sizes of lines and facilities and the capacity of the system. Complete plans and specifications must be submitted to DHES for final approval.)

D. **SOLID WASTE**

1. Describe the proposed method of collecting and disposing of solid waste from the development.
2. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.

E. **DRAINAGE**

1. Streets and roads.
 - a. Describe measures for disposing of storm run-off from streets and roads within the subdivision or onto adjacent property.
 - b. Indicate type of road surface proposed.
 - c. Describe facilities for stream or drainage crossing (e.g.: culverts, bridges).

2. Other Problems.

- a. Describe how surface run-off will be drained or channeled from parcels.
- b. Indicate if storm run-off will enter state waters and describe any proposed treatment measures.
- c. Describe any existing or proposed streambank or shoreline alteration, any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.

It is hereby agreed that if the attached plans dated _____ or any revision or amendment thereof is approved by the Department of Health and Environmental Sciences, installation of water supply and sewage disposal facilities will be made in accordance with the details thereof as shown on such approved plans. If the subdivided lands shown on such plans are sold before such installations are made, it is agreed that all purchasers of lots will be furnished with a legible reproduction of the approved plans, and they will be notified of the necessity of making installation in accordance with such approved plans.

Signature _____

Official Title _____

Date _____

Comment: The statement must be signed by the owner of the land platted for subdivision or the responsible official of the company or corporation offering the same for sale.

APPENDIX D

INFORMATION REQUIRED FOR ENVIRONMENTAL ASSESSMENT UNDER THE MONTANA SUBDIVISION AND PLATTING ACT

PART I. SANITATION FACILITIES

The subdivider shall provide the information required under Part II of the Joint Application.

PART II. ENVIRONMENTAL AND COMMUNITY INFORMATION

A. GEOLOGY

1. Locate on a copy of the preliminary plat or on a plat overlay any known hazards affecting the development which could result in property damage or personal injury due to:

- a. Falls, slides or slumps -- soil, rock, mud, snow.
- b. Seismic activity.

Describe any proposed measures to prevent or reduce the danger of property damage or personal injury from any of these hazards.

2. Identify any geological conditions that might affect development, such as areas of bedrock, unsuitable soils, or high ground water. Describe any measures proposed to minimize the problems presented by the identified conditions.

B. VEGETATION

1. Locate on a copy of the preliminary plat or on a plat overlay the location of the major vegetation types such as: marsh, grassland, shrub, forest.

2. Describe measures to be taken to protect trees and vegetative cover (e.g., design and location of lots, roads and open spaces).

3. Identify areas containing noxious weed growth. Describe proposed means of weed control, especially to prevent weed growth on areas disturbed by construction.

C. FISH AND WILDLIFE

1. Identify major species of fish and wildlife using the area to be affected by the proposed subdivision.

2. Locate on a copy of the preliminary plat or on a plat overlay any known important wildlife areas, such as big game winter range, waterfowl nesting areas, habitat for rare or endangered species, and wetlands.

3. Describe any proposed measures to protect wildlife habitat or to minimize degradation (e.g., keeping buildings and roads away from shorelines or setting aside marshlands as undeveloped open space).

D. HISTORICAL FEATURES

1. Describe and locate on a copy of the preliminary plat or on a plat overlay any known or possible historic, archaeological or cultural sites which may be affected by the proposed subdivision.

2. Describe any plans to protect such sites or properties.

E. ROADS

1. Describe any required construction of new public or private access roads or substantial improvements to existing public or private access roads.

2. Describe the proposed closure or modification of any existing roads.

3. Explain why access was not provided by means of a road within the subdivision, if access to any of the individual lots is directly from arterial streets or roads.

4. Indicate who will pay the cost of installing and maintaining dedicated and/or private roadway.

5. Estimate how much daily traffic the development, when fully developed, will generate on existing streets and arterial.

a. Discuss the capability of existing and proposed roads to safely accommodate this increased traffic.

b. Describe any increased maintenance problems and cost that will be caused by this increase in volume.

6. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision?

7. Identify the owners of any private property over which access to the subdivision will be provided. Have easements for access been obtained from the affected landowners?

F. UTILITIES

1. Indicate the utility companies involved in providing electrical power, natural gas, or telephone service. To what extent will these utilities be placed underground?

2. Identify on the preliminary plat or overlay the locations of any needed utility easements [as required by 76-3-608(c), MCA].

2. Has the preliminary plat been submitted to affected utilities for review?

3. Estimate the completion date of each utility installation.

G. EMERGENCY SERVICES

1. Describe the emergency services available to the residents of the proposed subdivision, including number of personnel and number of vehicles or type of facilities, and road distance to facilities for:
 - a. Fire protection--Is the proposed subdivision in an urban or rural fire district? If not, will one be formed or extended? In absence of a fire district, what fire protection procedures are planned?
 - b. Police protection.
 - c. Ambulance service.
 - d. Medical services.
2. Can the needs of the proposed subdivision for each of the above services be met by present personnel and facilities?
 - a. If not, what additional expense would be necessary to make these services adequate?
 - b. At whose expense would the necessary improvements be made?

H. SCHOOLS

1. Describe the available public educational facilities which would serve this subdivision, and the road distance to each.
2. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the appropriate public school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system.

I. LAND USE

1. Describe land uses on lands adjacent to the subdivision.
2. Describe any comprehensive plan or other land use regulations covering the area proposed for subdivision or adjacent land. If located near an incorporated city or town, is annexation proposed?
3. Where public lands are adjacent to or near the proposed development, describe the present and anticipated uses of those lands (e.g., grazing, logging, recreation). Describe how the subdivision will affect access to any public lands.
4. Describe any health or safety hazards on or near the subdivision, such as: mining activity, high pressure gas lines, dilapidated structures, high voltage power lines or irrigation ditches. Any such conditions should be accurately described and their origin and location identified.
5. Describe any on-site uses creating a nuisance, such as unpleasant odor, unusual noises, dust or smoke. Any such conditions should be accurately described and their origin and location identified.

J. PARKS AND RECREATION FACILITIES

1. Describe park and recreation facilities to be provided within the proposed subdivision and other recreational facilities which will serve the subdivision.

APPENDIX E

SUGGESTED FINDINGS OF FACT THAT WEIGH REVIEW CRITERIA

Comment: The following are example statements that could be used to prepare the required Findings of Fact that addresses the various elements of approval under 76-3-608, MCA. In many cases optional statements (e.g., 1a. or 1b.) are suggested to deal with different circumstances. Local officials will need to draft individual statements that address the particular circumstances of each proposed subdivision.

Local jurisdictions that have adopted comprehensive plans are authorized under Sections 76-3-604(1), and 76-1-606, MCA, to require proposed subdivision plats to conform to the comprehensive plan. Where a local government has adopted a resolution or ordinance requiring subdivision plats to conform to the comprehensive plan, the Findings of Fact should include a statement regarding conformance or non-conformance.

I. PRIMARY REVIEW CRITERIA

Effect on Agriculture

1a. The subdivision will remove _____ acres from (livestock production) (crop production).
or

1b. The subdivision will have no effect on agricultural production because there is no present commercial raising of livestock or crops.

2a. The subdivision will not interfere with any irrigation system or present any interference with agricultural operations in the vicinity.
or

2b. The subdivision could interfere with an existing irrigation system. Conditions of approval should require fencing and restrictive covenants.

Effect on Local Services

1a. The subdivision will connect to the municipal water and sewer systems. The cost of connecting will be paid by the subdivider or lot buyers, and the municipality should not experience an appreciable increase in maintenance and operating costs. The lot buyers will pay regular water and sewer charges.
or

1b. The subdivision will use on-site water supply and sewage disposal.

2a. The subdivision will receive law enforcement services from the (city police department) (county sheriff's department) and fire protection services from the _____ Fire Department. Providing these services to the subdivision is expected to be a negligible cost to the city (county) and fire department. Any increased costs likely will be covered by increased tax

revenues from improved properties.

or

2b. Providing these services to the subdivision is expected to create \$_____ in additional costs to the local government.

3a. No extension of public streets or roads will be needed, and the subdivision will have a negligible impact on costs of road maintenance.

or

3b. An upgrade of _____ Street will be necessary to serve the subdivision, at an estimated cost of \$_____. Annual road maintenance is expected to cost \$_____.

4. The land affected by the proposed subdivision currently pays an estimated \$_____ in local property taxes. After subdivision, the land and improvements are expected to pay approximately \$_____ in local property taxes, at current mill levies.

Effect on the Natural Environment

1. The subdivision will use proper-sized culverts as part of constructing a private access road from the (_____ Road) (_____ Street), which will minimize problems of road drainage and erosion.

2a. The relatively level terrain is not expected to create significant surface run-off problems.

or

2b. The steep terrain will require considerable cutting and filling, both for road construction and for grading and leveling a building site. Some surface run-off likely will occur but the grading and drainage plan is designed to prevent significant adverse impacts.

3. The subdivision is not expected to adversely affect native vegetation, soils or the water quality or quantity of surface or ground waters. Areas disturbed by cutting and filling and grading will be reseeded in the same season to minimize erosion.

4. Proposed weed control measures will prevent the proliferation of weed growth within the subdivision and on areas disturbed by construction.

Effect on Wildlife and Wildlife Habitat

1a. The subdivision will not be located in an area of significant wildlife habitat, nor in any critical wildlife areas. The expected effects of pets and human activity generated by the subdivision will not significantly affect wildlife.

or

1b. The subdivision is located in excellent habitat for _____. The subdivision will have an effect on wildlife, and the expected effects of pets and human activity generated by the subdivision could significantly affect wildlife.

or

1c. The subdivision is located adjacent to _____ Creek, which has an excellent fishery. Development of the lots could have an impact on the fishery, but conditions of approval

should require all structures to be set back at least 300 feet from the streambank to minimize the impacts.

2a. The subdivision will not result in closure of public access to hunting or fishing areas, nor to public lands.

or

2b. A public trail is included in the plat to provide access to the stream or public lands.

Effect on Public Health and Safety

1a. Based on available information, the subdivision does not appear to be subject to potential natural hazards such as flooding, snow or rock slides, high winds, wildfire or excessive slopes, nor potential man-made hazards such as high voltage power lines, high pressure gas lines, nearby industrial or mining activity, or high traffic volumes.

or

1b. The subdivision is subject to potential hazard from (flooding), (snow or rock slides), (high winds), (wildfire), (excessive slopes), (high voltage power lines), (high pressure gas lines), (nearby industrial or mining activity), or (high traffic volume). The subdivider has committed to minimize the effect of the hazards by:

_____, and
_____.

II. REQUIREMENTS OF MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS

The subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local subdivision regulations.

III. EASEMENTS FOR UTILITIES

1a. No easements will be necessary to extend utilities to the subdivision. Utilities are currently adjacent to the property or can be extended within the public road right-of-way.

or

1b. Easements to extend utilities across property(ies) owned by _____, _____ are needed. Utility easements will be granted to the subdivider by those property owners, and the instruments of easement conveyance will be filed with the county clerk and recorder.

revenues from improved properties.

or

2b. Providing these services to the subdivision is expected to create \$_____ in additional costs to the local government.

3a. No extension of public streets or roads will be needed, and the subdivision will have a negligible impact on costs of road maintenance.

or

3b. An upgrade of _____ Street will be necessary to serve the subdivision, at an estimated cost of \$_____. Annual road maintenance is expected to cost \$_____.

4. The land affected by the proposed subdivision currently pays an estimated \$_____ in local property taxes. After subdivision, the land and improvements are expected to pay approximately \$_____ in local property taxes, at current mill levies.

Effect on the Natural Environment

1. The subdivision will use proper-sized culverts as part of constructing a private access road from the (_____ Road) (_____ Street), which will minimize problems of road drainage and erosion.

2a. The relatively level terrain is not expected to create significant surface run-off problems.

or

2b. The steep terrain will require considerable cutting and filling, both for road construction and for grading and leveling a building site. Some surface run-off likely will occur but the grading and drainage plan is designed to prevent significant adverse impacts.

3. The subdivision is not expected to adversely affect native vegetation, soils or the water quality or quantity of surface or ground waters. Areas disturbed by cutting and filling and grading will be reseeded in the same season to minimize erosion.

4. Proposed weed control measures will prevent the proliferation of weed growth within the subdivision and on areas disturbed by construction.

Effect on Wildlife and Wildlife Habitat

1a. The subdivision will not be located in an area of significant wildlife habitat, nor in any critical wildlife areas. The expected effects of pets and human activity generated by the subdivision will not significantly affect wildlife.

or

1b. The subdivision is located in excellent habitat for _____. The subdivision will have an effect on wildlife, and the expected effects of pets and human activity generated by the subdivision could significantly affect wildlife.

or

1c. The subdivision is located adjacent to _____ Creek, which has an excellent fishery. Development of the lots could have an impact on the fishery, but conditions of approval

should require all structures to be set back at least 300 feet from the streambank to minimize the impacts.

2a. The subdivision will not result in closure of public access to hunting or fishing areas, nor to public lands.

or

2b. A public trail is included in the plat to provide access to the stream or public lands.

Effect on Public Health and Safety

1a. Based on available information, the subdivision does not appear to be subject to potential natural hazards such as flooding, snow or rock slides, high winds, wildfire or excessive slopes, nor potential man-made hazards such as high voltage power lines, high pressure gas lines, nearby industrial or mining activity, or high traffic volumes.

or

1b. The subdivision is subject to potential hazard from (flooding), (snow or rock slides), (high winds), (wildfire), (excessive slopes), (high voltage power lines), (high pressure gas lines), (nearby industrial or mining activity), or (high traffic volume). The subdivider has committed to minimize the effect of the hazards by:

_____, and
_____.

II. REQUIREMENTS OF MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS

The subdivision meets the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local subdivision regulations.

III. EASEMENTS FOR UTILITIES

1a. No easements will be necessary to extend utilities to the subdivision. Utilities are currently adjacent to the property or can be extended within the public road right-of-way.

or

1b. Easements to extend utilities across property(ies) owned by _____, _____ are needed. Utility easements will be granted to the subdivider by those property owners, and the instruments of easement conveyance will be filed with the county clerk and recorder.

VI. LEGAL AND PHYSICAL ACCESS

1a. Legal access will be provided by (_____ Road) (_____ Street), a public road that is adjacent to the lot(s).

or

1b. Legal access will be provided by a 60-foot wide road easement across properties belonging to _____, _____, and _____. The easements will be surveyed, and instruments of easement conveyance will be filed with the county clerk and recorder.

2a. Physical access will be provided by (_____ Road) (_____ Street), a public road that is adjacent to the lot(s).

or

2b. Physical access will be provided by a road with a ____-foot wide driving surface constructed in accordance with local road standards from (_____ Road) (_____ Street) to the subdivision.)

3. The following statement will be written on the face of the subdivision plat and on any instruments of conveyance:

a. "Legal and physical access is provided by (_____ Road) (_____ Street), a public road located adjacent to the property."

or

b. "Legal access is provided from (_____ Road) (_____ Street), a public road, by a 60 foot-wide easement across property owned by _____, _____, and _____. Physical access is provided by a road with a ____-foot wide driving surface.")

V. CONFORMANCE TO ADOPTED COMPREHENSIVE PLAN

Comment: Local jurisdictions that have adopted a comprehensive plan and have adopted a resolution or ordinance that requires subdivision plats to conform to the comprehensive plan should include a statement similar to one of the following examples.

1a. The subdivision plat conforms to the comprehensive plan adopted by ____ (local government) _____.

or

1b. The subdivision plat is not in conformance to the comprehensive plan adopted by ____ (local government) _____ for the following reasons:

_____, and _____.

APPENDIX F

STANDARDS FOR FLOOD HAZARD EVALUATIONS

Where a subdivider is required by the governing body to provide data for use in defining the 100 year floodway of a stream subject to flooding, the following information shall be submitted to the Floodplain Management Section of the Water Resources Division, Montana Department of Natural Resources and Conservation.

1. A copy of the plat showing contour intervals of no greater than five feet.
2. The location and elevation of a temporary bench mark established with the subdivision and referenced to mean sea level with appropriate elevation adjustment.
3. A minimum of four surveyed valley cross sections of the stream according to the following requirements:
 - a. Cross sections shall include the stream channel and floodplain on both banks and shall be normal to direction of flow.
 - b. At least one cross section shall be taken at a point on the stream from which it could be extended through the subdivision.
 - c. Three cross sections shall be taken downstream from the subdivision, no more than 1,000 feet apart, but in no case may vertical drop between cross sections exceed 5.0 feet. The cross section farthest downstream should be located at a natural constriction or bridge crossing if possible. Cross sections shall be taken at any location map.
 - d. Distances between cross sections are to be determined by stadia, and these distances and locations of cross sections shall be shown on the location map.
 - e. The overbank cross sections are to be extended to obtain a vertical rise of 15 feet above the water surface.
4. If a U.S. Geological Survey gauging station is within the reach of the stream under study, the elevation of any convenient foot mark shall be surveyed and clearly indicated on the location map.
5. Descriptions and sketches of all bridges within the reach, showing unobstructed waterway openings and elevations.
6. Color photographs clearly depicting the vegetation of both overbanks and the material composition of the banks and channel bottom shall be submitted for each cross section.
7. Cross sections plotted on cross section paper of ten divisions to the inch using any convenient, identified scale for vertical and horizontal distance. The water surface at the time of survey shall be plotted on each cross section.

8. A profile sheet prepared on cross section paper at ten divisions to the inch, showing the observed water surface profile, location of cross sections, subdivision boundaries, riverbank profile, and thalweg (lowest point of the channel bottom).

A location map, such as U.S. Geological Survey seven and one-half (7 1/2) minutes or similar map, showing the proposed subdivision, the locations of the valley cross sections, and any gauging stations.

9. These requirements may vary, so the Supervisor of the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation should be contacted.

APPENDIX G

SAMPLE FORMS AND CERTIFICATES

Final Plat Approval Application Form

Certificate of Completion of Public Improvements

Certificate of Surveyor -- Final Plat

Certificate of Dedication -- Final Plat

Certificate of Consent to Dedication by Encumbrances

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

Certificate Stating Facts Authorizing the Governing Body to Waive Park Dedication Under the Five Acre, Single Family Dwelling Exemption

Covenant for Use With the Five Acre, single Family Dwelling Exemption

Certificate of Examining Land Surveyor Where Required -- Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval -- County

Certificate of Final Plat Approval -- City

Certificate of Filing by Clerk and Recorder

Final Plat Approval Application Form

- Date _____
1. Name of Subdivision _____
 2. Location: _____ 1/4 Section _____ Township _____ Range _____ For
Amended Plats: Lot(s) _____ Block(s) _____ Subdivision _____
 3. Name, address and telephone number of subdivider:

 4. Name, address and telephone number of persons of firms providing services
and information (e.g. surveyor, engineer, designer, planning consultant,
attorney) _____

 5. Descriptive Data:
 - a. Gross area in acres _____
 - b. Number of lots or rental spaces _____
 - c. Existing zoning or other regulations _____

 6. Date Preliminary Plat Approved: _____
 7. Any Conditions? _____ (If yes, attach list of conditions.)
 8. Any Deed Restrictions or covenants? _____ (If Yes, attach a copy.)
 9. All improvements installed? _____ (If No, attach a subdivision improvements
agreement or guarantees.)
 10. List of materials submitted with this application:
 - a. _____ d. _____
 - b. _____ e. _____
 - c. _____ f. _____

I do hereby depose and say that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the (governing body) of (city or county) for approval of the final plat of (Name of Subdivision).

Subdivider

FOR OFFICIAL USE ONLY

1. Application Number _____
2. Date Application Submitted _____
3. Date by which Final Plat must be approved or rejected _____

Certificate of Completion of Public Improvements Agreement
(To be submitted with application for approval of final subdivision plat)

CERTIFICATE OF COMPLETION

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the State of Montana, hereby certify that the following public improvements, required as a condition of approval of (Name of Subdivision), have been installed in conformance with the attached engineering specifications and plans:
(List the improvements actually installed.)

Signature of Subdivider Date

Signature of Professional Date
Engineer

Registration No. _____

Address (Engineers Seal)

Certificate of Surveyor -- Final Plat

State of Montana)
) ss.
County of _____)

I, (Name of Surveyor), a registered Land Surveyor, do hereby certify that I have performed the survey shown on the attached plat of (Name of Subdivision); that such survey was made on (Date of Survey); that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

Dated this _____ day of _____, 19__.

(Seal)

(Signature of Surveyor)

Registration No. ____

(Address)

Certificate of Dedication -- Final Plat

(I) (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat hereto annexed, the following described land in (City and County if in Unincorporated Area), to-wit:

(Exterior boundary description of area contained in plat and total acreage)

The above described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever.

Dated this _____ day of _____, 19__ .

(Acknowledged and notarized signatures of all record owners of platted property)

Consent to Dedication by Encumbrancers, If Any

(I) (We), the undersigned encumbrancer(s), do hereby join in and consent to the annexed plat and release (my) (our) respective liens, claims and encumbrances as to any portion of said lands shown on such plat as being dedicated to the use of the public forever.

Dated this _____ day of _____, 19__.

(Acknowledged and notarized signatures of all encumbrancers of record)

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

I, (Name of City or Town Clerk), (County Clerk and Recorder) of (Name of City or County), Montana, do certify that the following order was made by the (Governing Body) of (Name of City or County) at a meeting thereof held on the _____ day of _____, 19____, and entered into the proceedings of said Body to-wit: "Inasmuch as the dedication of park land within the platted area of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of this meeting, it is hereby ordered by the (Name of Governing Body) that land dedication for park purposes be waived and that cash in lieu of park with the provisions of Title 76, Chapter 3, MCA."

In witness whereof, I have hereunto affixed the seal of (Name of City or County), Montana this _____ day of _____, 19____.

(Seal)

(Signature of Clerk)

Certificate Stating Facts Authorizing the Governing Body to Waive Park Dedication Under the Five Acre, Single Family Dwelling Exemption of the Montana Subdivision and Platting Act.

(Name of Subdivider), referred to herein as the subdivider, hereby certifies that all of the parcels with (Name of Subdivision) contain five acres or more and that the Subdivider will enter into a covenant to run with the land and revocable only by mutual consent of the owners of the parcels in question and the governing body of (Name of City or County), that the parcels in the subdivision will never be subdivided into parcels of less than five acres and that only single family dwellings and associated outbuildings will be constructed on any single lot or parcel within the boundaries of the subdivision and only one single lot or parcel within the subdivision. A copy of this covenant is attached hereto:

(Date)

(Notarized Signature of Subdivider)

Declaration of Covenant

(To be filed with final plat where the five-acre, single family dwelling exemption applies)

THIS DECLARATION made on the date hereafter set forth, by (Name of Subdivider).

W I T N E S S E T H

THAT WHEREAS, Declarant is the owner of certain property known as (Name of Subdivision) in (City or County), State of Montana, which is more particularly described in attached Exhibit A.

NOW, THEREFORE, (Name of Subdivider) hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenant which shall run with the real property and be binding on all parties having any heirs, successors and assigns, and shall bind each owner thereof. The covenant may be revoked for any or all parcels within the subdivision by mutual consent of the owners of the parcels in question and the governing body of (City or County).

TO WIT:

No parcels within (Name of Subdivision) may be re-subdivided into parcels containing less than five acres and only single family dwellings and their associated outbuildings may be constructed within the boundaries of the subdivision, and only one such dwelling may be constructed on any present or future parcel or lot within the constructed subdivision. For the purpose of this restriction "single family dwelling" shall mean a building under one roof designed and intended for use and occupancy as a residence by a single family.

The governing body of (Name of City or County) is deemed to be a party to and may enforce its covenant.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this ____ day of _____, 19__.

(Signature of Subdivider)
Acknowledgement and notarization
of Signature

Certificate of Examining Land Surveyor Where Required -- Final Plat

I, (Name of Examining Land Surveyor), acting as an Examining Land Surveyor for (City or County), Montana, do hereby certify that I have examined the final plat of (Name of Subdivision) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, MCA.

Dated this ____ day of _____, 19__ .

(Signature)
(Name of Surveyor)
Registration No. ____
(City or County)

Certificate of County Treasurer

I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that no real property taxes assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) are delinquent:

(legal description of land)

Dated this ____ day of _____, 19__ .

(seal) (Signature of County Treasurer) Treasurer,
____ County, Montana

Certificate of Final Plat Approval -- County

The County Commission of _____ County, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this ____ day of _____, 19__ .

(Signatures of Commissioners)

ATTEST:

(Seal of County)

(Signature of Clerk and Recorder)
_____, Montana

Certificate of Final Plat Approval -- City

The (Commission) (Council) of the City (Town) of (Name of City or Town), Montana, does hereby certify that it has examined this subdivision plat and, having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this ____ day of _____, 19__.

by (Signature of City or Town Clerk)
Clerk

(Signature of Mayor)
Mayor

Certificate of Filing by Clerk and Recorder

STATE OF MONTANA)
) ss.
County of _____)

Filed for record this _____ day of _____, 19__ , at _____ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder, _____ County, Montana

APPENDIX H

SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

MODEL SUBDIVISION IMPROVEMENT AGREEMENT

The parties to this Subdivision Improvements Agreement ("this agreement") are _____ ("the Developer") and _____ ("the City" or "the County").

WHEREAS, the Developer also desires to defer construction of improvements described in Attachment B;

WHEREAS, the purpose of this Agreement is to protect the City (or County) and is not intended for the benefit of contractors, suppliers, laborers or others providing work, services, or materials to the Subdivision, or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized by state law and the City (or County) subdivision regulations.

NOW THEREFORE BE IT RESOLVED, The Parties hereby agree as follows:

1. Effective Date: The effective date of this Agreement shall be the date that final subdivision plat approval is granted by the City (or County).
2. Attachments: The Attachments cited herein are hereby made a part of this Agreement.

Developer's Obligations

3. Improvements: The Developer shall construct and install, at his own expense, those subdivision improvements listed in Attachment B of this Agreement. The Developer's obligation to complete the improvements shall arise upon approval of the final subdivision plat, shall not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and shall be independent of any obligations of the City (or County) contained in this Agreement.

4. Security: To secure the performance of his obligations under this Agreement, the Developer shall deposit with the City (or County) on or before the effective date, an Irrevocable Letter of Credit (or other financial security acceptable to the local officials) in the amount of \$_____. The letter of credit shall be issued by (lending institution), be payable at sight to the City (or County) and bear an expiration date not sooner than 4 years after the effective date of this Agreement. The letter of credit shall be payable to the City (or County) at any time upon presentation of (1) a sight draft drawn on the issuing lending institution in the amount up to \$_____, (2) a signed statement or affidavit executed by an authorized City (or County) official stating that the Developer is in default under this Agreement; and (3) the original copy of the letter of credit.

5. Standards: The Developer shall construct the required improvements according to the standards and specifications required by the City (or County) as specified in Attachment D of this Agreement.

6. Warranty: The Developer warrants that each and every improvement shall be free from defects for a period of 1 year from the date that the City (or County) accepts the dedication of the last improvement completed by the Developer.

7. Commencement and Completion Periods: The Developer shall complete all of the required improvements within (2) years from the effective date of this Agreement.

8. Compliance with Law: The Developer shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

City's (or County's) Obligations

9. Inspection and Certification: (A) The City (or County) shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment D of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Developer that the improvements are complete and he desires City (or County) inspection and certification. Before requesting City (or County) certification of any improvement the Developer shall present to the City (or County) valid lien waivers from all persons providing materials or performing work on the improvement. (B) Certification by the City (or County) does not constitute a waiver by the City (or County) of the right to draw funds under the letter of credit in the event defects in or failure of any improvement are found following the certification.

10. Notice of Defect: The City (or County) shall provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications set forth in Attachment D, or is otherwise defective. The Developer shall have 30 days from the date the notice is issued to remedy the defect. The City (or County) may not declare a default under this Agreement during the 30 day remedy period unless the Developer clearly indicates he does not intend to correct the defect. The Developer shall have no right to correct the defect in, or failure of, any improvement found after the City (or County) accepts dedication of the improvements.

11. Reduction of Security: After the acceptance of any improvement, the amount that the City (or County) is entitled to draw on the letter of credit shall be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown in Attachment B. At the request of the Developer, the City (or County) shall execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the letter of credit to the extent of the amount. Upon the certification of all of the improvements the balance that may be drawn under the credit shall be available to the City (or County) for the one year warranty period plus an additional 90 days.

12. Use of Proceeds: The City (or County) shall use funds drawn under the letter of credit only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

Other Provisions

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Developer during the completion period:

- a. failure to complete construction of the improvements within 2 years of final subdivision plat approval;
- b. failure to remedy the defective construction of any improvement within the remedy period;
- c. insolvency of the Developer or the filing of a petition for bankruptcy;
- d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.

14. Measure of Damages: The measure of damages for breach of this Agreement shall be the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment B shall be prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Developer's liability. The City (or County) shall be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.

15. Local Government Rights Upon Default: (A) Upon the occurrence of any event of default, the City (or County) may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost (as shown in Attachment B) of all improvements previously certified by the City (or County). The City (or County) shall have the right to complete improvements itself or contract with a third party for completion, or the City (or County) may assign the proceeds of the letter of credit to a subsequent developer who has acquired the Subdivision and who shall have the same rights of completion as the City (or County) if and only if the subsequent developer agrees in writing to complete the unfinished improvements. (B) In addition, the City (or County) may suspend final plat approval during which time the Developer shall have no right to sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City (or County) or until the improvements are completed and certified by the City (or County).

16. Indemnification: The Developer agrees to indemnify and hold the City (or County) harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Developer is not an employee or agent of the City (or County).

17. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City (or County) and by the Developer.

18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.

19. Third Party Rights: No person or entity who is not party to this Agreement shall have any right of action under this Agreement, except that if the City (or County) does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City (or County) to exercise its rights.

20. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement shall be binding on the parties.

21. Time: For the purpose of computing the commencement and completion periods, and time periods for City (or County) action, times in which war, civil disasters, acts of God or extreme weather conditions occur shall not be included if the events prevent the Developer or the City (or County) from performing the obligations under this Agreement.

22. Assigns: The benefits of this Agreement to the Developer may not be assigned without the express written approval of the City (or County). Such approval may not be withheld unreasonable, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

The City (or County) shall release the original Developer's letter of credit if it accepts new security from any developer or lender who obtains the property. However, no action by the City (or County) shall constitute a release of the original developer from his liability under this Agreement.

23. Severability: If any part, term or provision of this Agreement is held by the courts to be illegal the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

Dated this ____ day of _____, 19____.

City (or County) Official

Developer

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider default on installing the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 100 percent of the estimated total cost of installing all required improvements.

1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in an amount equal to the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body.

Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:

- a. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.
- b. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, shall be established by a licensed real estate appraiser at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Make an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement shall be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion, and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

5. Surety Performance Bond

The bond shall be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond shall be payable to the County (City) of _____. The bond shall be in effect until the completed improvements are accepted by the governing body.

6. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the board of county commissioners to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and will be deemed to run with the land.

Comment: Local officials should be cautious in accepting special improvement districts or rural improvement districts as forms of improvements guaranties. In a number of cases in Montana, the subdivider has been unable to pay the assessments, and the city or county has had to bear the cost of completing the required improvements. These problems occur most frequently where improvement districts are formed as a means to provide improvements on raw land, and local officials may want to avoid creating improvement districts for undeveloped property.

Local officials should consult a bond underwriter before accepting an improvement district as a form of improvements guaranty.

Comment: Letters of credit may be revocable, so it is important to express that the letter of credit is irrevocable. Because the letter of credit does not incorporate the subdivision improvement agreement the issuer of the credit cannot raise objections to the demand for payment. By requiring the local government to present only a signed statement or affidavit that the developer is in default, the local government need not present proof of default or signed statements from any other party.

Under the letter of credit the local government is committed to use the funds for completion of the improvement.

It is important that the expiration date of the letter of credit gives the local government a reasonable amount of time after the improvements completion deadline to inspect the improvements, and if defects are found to prepare proper drafts and documentation for presentation to the lending institution.

Lending institutions may resist longer periods for their letters of credit to be in force because it extends their risk over a greater length of time. Typically, 18–24 months constitute the completion period, and an additional 1 year warranty period is established to allow the local government to monitor for defects or failures. Following the warranty period an additional 90 days is reasonable to give local officials time to submit any drafts and documentation to draw funds, if necessary.

A "sight draft" commits the payor to make payment at the time the draft is presented, or on sight. Other types of drafts allow a waiting period or approval before the payor must make the payment.

MODEL
IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. _____

Name of Local Government _____ Date _____
Address _____

Gentlemen:

We hereby establish in your favor our Irrevocable Letter of Credit # _____ for the account of _____ (Developer), available by your drafts at sight up to an aggregate amount of \$ _____. Should _____ (Developer) default or fail to complete the improvements under the terms specified in the attached subdivision improvements agreement for _____ (name of subdivision) we shall pay on demand your sight draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements.

All drafts must be presented prior to _____ expiration date _____ and this Letter of Credit must accompany the final draft for payment. Drafts drawn hereunder must be by sight draft marked:

"Drawn under _____ (lending institution), Letter of Credit # _____ dated _____ (date of Letter of Credit)," and the amount drawn endorsed on the reverse hereof by the lending institution.

Unless otherwise stated, this Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce. We hereby agree with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Credit that these drafts shall be duly honored upon presentation to the drawee.

This letter of credit may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

_____(Lending Institution)_____

_____(Signature and Title of Official)_____

APPENDIX I

GRANT OF ACCESS EASEMENT

THIS INDENTURE, made and entered into this _____ day of _____, 19__, by and between _____, of _____, Montana, hereinafter referred to as the "Grantor", and _____ (subdivider) _____ of _____, Montana, hereinafter referred to as the "Grantee."

THE GRANTOR does hereby give, grant and convey unto the Grantee, its successor and assigns, the right, privilege and authority to construct, reconstruct, maintain, operate, repair, improve, and to travel upon and use, a road and its necessary fixtures and appurtenances through, over, and across a corridor, 60 feet wide, shown on the attached certificate of survey, extending across the following described tract(s) of land:

(legal description of Grantor's property over which easement is granted)

THIS GRANT of right and authority shall run with the said property and be binding on the Grantor, its successors, all subsequent owners and any parties having right, title, or interest in the said property.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand this _____ day of _____, 19__.

Grantor

STATE OF MONTANA)
) ss.
County of _____)

On this _____ day of _____, 19__, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this _____ day of _____, 19__.

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____

APPENDIX J

UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS (ARM 8.94.3003)

1. A final subdivision plat may not be approved by the governing body nor filed by the county clerk and recorder unless it complies with the following requirements:

- a. Final subdivision plats shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be 24 inches by 36 inches overall to include a 1 1/2 inch margin on the binding side.
- b. One signed cloth-backed or opaque mylar copy and one signed reproducible copy on a stable based polyester film or equivalent shall be submitted.
- c. Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications shall be shown or referenced on one sheet.
- d. Changes to a filed subdivision plat must be filed with the county clerk and recorder as an amended plat. An amended plat may not be filed unless it meets the filing requirements for a final subdivision plat specified in these rules, except that approval by the local governing body is not required where waived by Section 76-3-207 (1)(e), MCA, for relocation of common boundary lines or aggregation of five or fewer lots.

2. The final plat submitted for approval shall show or contain, on its face or on separate sheets referenced on the plat:

- a. A title block indicating the quarter-section(s), section, township, range, principal meridian, and county of the subdivision. The title of the plat shall contain the words "plat" and "subdivision".
- b. Name(s) of the owner(s) of the land surveyed and the names of any adjoining platted subdivisions and numbers of any adjoining certificates of survey previously recorded and ties thereto.
- c. North point.
- d. Scale bar (scale shall be sufficient to legibly represent the required data on the plat submitted for filing).
- e. All monuments found, set, reset, replaced or removed describing their kind, size, location and giving other data relating thereto.
- f. Witness monuments, basis for bearing, bearings and lengths of lines.
- g. The bearings, distances and curve data of all perimeter boundary lines shall be indicated. When the subdivision is bounded by an irregular shoreline or body of water, the bearings and distances of a meander traverse shall be given.
- h. Data on all curves sufficient to enable the reestablishment of the curves on the ground.
- i. Lengths of all lines shall be shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.
- j. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.

- k. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels shall be marked "Not included in this subdivision" or "Not included in this plat"; as appropriate, and the boundary completely indicated by bearings and distances.)
- l. All streets, alleys, avenues, roads and highways; their widths, bearings; the width and purpose of all rights-of-way; and the names of all streets, roads and highways.
- m. The location, dimensions and areas of all parks, common areas, and all other grounds dedicated for public use.
- n. Acreage of the subdivision, gross and net.
- o. A legal description of the perimeter boundary of the tract surveyed.
- p. All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the filing of the plat, the location of such additional monuments shall be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the positions of any corner or boundary indicated on the plat must be clearly shown.
- q. The signature and seal of the registered land surveyor responsible for the survey. The affixing of the seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (Sections 76-3-101 through 76-3-614, MCA) and the regulations adopted pursuant thereto.
- r. Memorandum of oaths administered pursuant to Section 76-3-405, MCA.
- s. Certification by the governing body that the final subdivision plat is approved, except where the plat shows changes to a filed subdivision plat which are exempt from local government review under Section 76-3-207(1)(e), MCA. Where an amended plat qualifies for such a waiver the plat must contain a statement that pursuant to Section 76-3-207(1)(e), MCA, approval by local governing body is not required for relocation of common boundary lines or aggregation of lots.

3. The following documents shall accompany the approved final plat when filed with the county clerk and recorder:

- a. Certification of dedication of streets, parks or playgrounds, or other public improvements, or of cash donation in lieu of dedication, when applicable.
- b. Certification by a licensed title abstractor showing the names of the owners of record of land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
- c. Copies of any covenants or deed restrictions relating to public improvements.
- d. Certification by the Montana Department of Health and Environmental Sciences that it has approved the plans and specifications for sanitary facilities.
- e. Copies of articles of incorporation and by-laws for any property owners' association.
- f. Certification by the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvements to be installed.

- g. Copies of final plans, profiles, grades and specifications for improvements including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans.
- h. Certification by the governing body expressly accepting any dedicated land and improvements. Acceptance of dedication shall be ineffective without such certification.
- i. Certification of examining land surveyor where applicable.
- j. Copy of the state highway permit when a new street or road access will intersect with a state highway.

APPENDIX K

MODEL EVASION CRITERIA

Comment: Local governments can prevent misuse of the exemptions from local subdivision review by adopting criteria that define the proper and improper use of the exemptions. Numerous court cases and Attorney General opinions have provided the legal authority for adopting local evasion criteria. The following resolution is drafted for counties but can be easily tailored to municipalities. Because of 1993 amendments to the Montana Subdivision and Platting Act, Evasion Criteria previously adopted by local governments will need to be amended. The language in italics should be used by jurisdictions that are amending existing Evasion Criteria.

RESOLUTION NO. _____

A RESOLUTION ADOPTING (REVISED) CRITERIA FOR LOCAL DETERMINATION OF EVASION OF THE SUBDIVISION AND PLATTING ACT

(WHEREAS, the Resolution Adopting Criteria for Local Determination of Evasion of the Subdivision and Platting Act (the Act) dated _____, 19__, is in need of revision because of legislative changes to the Act and recent Attorney General Opinions and court decisions pertaining to the Act; and)

WHEREAS, the Legislature, in adopting and amending the Subdivision and Platting Act, Section 76-3-101, *et. seq.*, MCA, has presumed: (1) that parcels of land containing less than 160 acres are building sites and that the creation of these parcels should be reviewed and approved by the local governing body applying the primary review criteria set forth in Section 76-3-608, MCA; (2) that the exemptions from subdivision review under Sections 76-3-201, and 76-3-207, MCA are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites or creates so few building sites that only minimal impact will likely result; and (3) that the purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review but rather to deal with the exceptional circumstance when subdivision review is unnecessary; and

WHEREAS, the Montana Supreme Court decisions in Florence-Carlton School District vs. Ravalli County Board of Commissioners, 1978; Leach v. Visser, 1989; and State ex rel. Dreher v. Fuller, 1993; has recognized a county's right to narrowly interpret and enforce the provisions of the Montana Subdivision and Platting Act, especially those pertaining to the use of exemptions; and

WHEREAS, the parcels of land created by exemptions often do not provide for: (1) the coordination of roads within the divided land or with other roads, both existing and planned; (2) the dedication of land for roadways and public utility easements; (3) the provision of adequate open spaces, for travel, light, air and recreation; (4) the provision of adequate transportation, water drainage, and sanitary

facilities; (5) the avoidance of minimizing of congestion; (6) the avoidance of land division that would involve unnecessary environmental degradation; and (7) the avoidance of danger or injury to health, safety or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, schools or other public services, or would necessitate an excessive expenditure of public funds for the supply of such services; and

WHEREAS, the likelihood that land development problems will occur is greatly increased when building sites are created without public review and are further divided without review; and

WHEREAS, the Commissioners of _____ County have established the necessary procedures for expedient review of subdivisions creating five or fewer parcels and thus have diminished the justification for avoiding review through use of exemptions.

NOW THEREFORE BE IT RESOLVED, that _____ County adopts the following criteria *(that shall supersede those adopted by _____ County on _____, 19____, and the criteria)* shall guide the County Commissioners in determining when the use of an exemption from subdivision review is adopted to evade the purpose of the Montana Subdivision and Platting Act:

A. PROCEDURES AND GENERAL REQUIREMENTS

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey or where a survey is not required an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption.
2. When a certificate of survey or instrument of conveyance is submitted to the County Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the designated agents of the governing body: (the county planner, sanitarian and clerk and recorder). The agents shall review the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.
3. After the review to evaluate compliance with the requirements contained in this Resolution, the agents shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the clerk and recorder to not file or record the documents, and the clerk shall return the materials to the landowner.
5. Any person whose proposed use of exemption has been denied by the designated agents because the use of the exemption raised a rebuttable presumption established by these guidelines may appeal the agents' decision to the County Commissioners. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act, and, thereby overcome the rebuttable presumption.

If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

If the use of an exemption is determined to be an evasion of the Act, the landowner may submit a subdivision application for the proposed land division.

6. Advisory Examination. Landowners or their representatives are encouraged to meet with the County's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents may issue an advisory opinion only, and the opinion creates no commitment on the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The County Commission and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993)

8. To assist in the implementation of this review process and to monitor those parcels by exemption the clerk and recorder shall cause the following letter system to be added to the numbering of recorded certificates of survey filed after the effective date of this resolution.

CO ... Court order (76-3-201(1), MCA)
ME ... Mortgage Exemption (76-3-201(2), MCA)
LE ... Life Estate (76-3-201(5), MCA)
RB ... Relocation of Common Boundary (76-3-207(a), MCA)
FC ... Family Conveyance (76-3-207(b), MCA)
AE ... Agricultural Exemption (76-3-207(c), MCA)
OS ... Occasional Sale (76-3-207(d), MCA) {used prior to April 6, 1993}
AL ... Aggregation of Lots (76-3-207(e), MCA)

Comment: These are suggested prefixes for certificates of survey. Each county may have its own system of tracking exemptions.

9. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever 3 or more parcels of less than 160 acres with common covenants or facilities have been divided from the original tract.

B. EXEMPTION AS A GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY (76-3-207(1)(b), MCA)

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each of member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.

2. The Attorney General has defined "immediate family" as the spouse, children or parents of the grantor.

3. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.

4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this Resolution. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.

5. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.

6. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

C. EXEMPTION TO PROVIDE SECURITY FOR A CONSTRUCTION MORTGAGE, LIEN OR TRUST INDENTURE (76-3-201(2), MCA)

1. Statement of Intent: Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as security for a building construction loan.

Comment: With the elimination of the occasional sale exemption, local jurisdictions may see widespread efforts to use the "construction mortgage" exemption as a means to create building lots without review. Local officials should diligently review each proposed use of this exemption to ensure the use conforms to the intended purpose specified in C.1. on the previous page. **Legitimate use of this exemption must involve (1) a larger tract that the claimant is purchasing and does not yet hold title, and (2) a requirement from a lending institution that title to a smaller parcel be surrendered as security for a building construction loan.**

2. When this exemption is to be used, the landowner shall submit to the clerk and recorder:

- a. a statement of how many parcels within the original tract will be created by use of the exemption;
- b. the deed, trust indenture or mortgage for the exempt parcel (which states that the tract of land is being created only to secure a construction mortgage, lien or trust indenture);
- c. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and
- d. a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

3. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- a. it will create more than one building site;
- b. the financing is not for construction on the exempted parcel;
- c. the person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed to anyone other than the borrower of funds for construction.
- d. title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs.
- e. it appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.

D. EXEMPTION FOR AGRICULTURAL PURPOSES (76-3-207[C], MCA)

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial or industrial buildings will be built.

2. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DHES, provided the applicable exemption is properly invoked by the property owner.

3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the Act:

- a. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the county commissioners and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the county commissioners.
- b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
- c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

E. RELOCATION OF COMMON BOUNDARY (76-3-207[a], MCA)

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision review.

2. Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey.

3. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

F. REMAINDER PARCELS

1. Statement of Intent: A "remainder" parcel is that part of an original tract that is left following the segregation of other parcels from the tract for the purpose of transfer. A "remainder" may not be created for the purpose of conveyance and must be retained by the owner. A "remainder" that is created by the segregation of a subdivision from a larger original tract is not part of the subdivision nor is it subject to the surveying requirements of the MSPA. Although the term "remainder" does not appear in the MSPA, the possibility that remainder parcels may exist is implicit in the express provisions of the MSPA (Attorney General Letter opinion to Robert McCarthy, April 22, 1987).

2. A landowner claiming that a parcel is a "remainder" must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel; building plans for a structure to be built by or for the landowner.

DATED this ____ day of _____, 19 ____

BOARD OF _____ COUNTY COMMISSIONERS

Chairman

APPENDIX L

Definitions

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

1. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
2. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations.
3. **COMPREHENSIVE PLAN OR MASTER PLAN:** Defined in Section 76-1-103, MCA, as a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.
4. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.
5. **COVENANT:** An agreement, in writing, of two or more parties by which any of the parties pledges to the others that something is done or shall be done.
6. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.
7. **DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the Montana Subdivision and Platting Act. Provided that where required by the Act the land upon which an improvement is situated has been subdivided in compliance with the Act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of the Act.
8. **DWELLING UNIT:** Any building or portion thereof providing complete, independent and permanent living facilities for one family.
9. **EASEMENT:** A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner.

10. **ENGINEER (REGISTERED PROFESSIONAL ENGINEER):** A person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.
11. **FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.
12. **FLOOD OF 100 YEAR FREQUENCY:** A flood magnitude expected to recur on the average of one every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.
13. **FLOODPLAIN:** The area adjoining the watercourse or drainage which would be covered by the floodwater of a flood of 100 year frequency.
14. **FLOODWAY:** The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainage.
15. **GOVERNING BODY:** The City Council (County Commission) of _____.
16. **LOT:** A parcel, plot, or other land area created by subdivision for sale, rent, or lease.
17. **LOT MEASUREMENTS:**
 - a. **Lot Depth --** The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
 - b. **Lot Width --** The average width of the lot.
 - c. **Lot Frontage --** The width of the front lot line.
 - d. **Lot Area --** The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.
18. **LOT TYPES:**
 - a. **Corner Lot:** A lot located at the intersection of two streets.
 - b. **Interior Lot:** A lot with frontage on only one street.
 - c. **Through or Double-Frontage Lot:** A lot whose front and rear lines both abut on streets.
19. **MINOR SUBDIVISION:** A subdivision containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds.
20. **MOBILE HOME:** A factory-assembled structure or structures equipped with the necessary service connections and made so as to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit(s) without a permanent foundation.

21. MOBILE HOME LOT: A designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
22. MOBILE HOME PARK: A tract of land providing two or more mobile home lots for lease or rent to the general public.
23. MOBILE HOME STAND: That area of a mobile home lot which has been prepared for the placement of a mobile home.
24. MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MINIMUM STANDARDS: Minimum standards as set forth by the Division of Environmental Sciences of the Montana Department of Health and Environmental Sciences, adopted pursuant to Title 76, Chapter 4, Part I, MCA.
25. MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
26. OPEN SPACE: An undeveloped land or water area devoid of buildings except where accessory to the provision of recreation.
27. OVERALL DEVELOPMENT PLAN: The plan of a subdivision design for a single tract proposed to be subdivided by stages.
28. PLANNED UNIT DEVELOPMENT (P.U.D.): A land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in a common ownership or use.
29. PLANNING BOARD: The (City or City-County) Planning Board formed pursuant to Title 76, Chapter 1, MCA.
30. PLAT: A graphic representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.
 - a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.
 - b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA.)

- c. Amended Plat: The final drawing of any change to a platted subdivision filed with the county clerk and recorder required to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in these regulations and the Subdivision and Platting Act. (Title 76, Chapter 3, MCA).
- 31. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public such as parks, streets and roads, sidewalks, curbs and gutters, street lighting, utilities and systems for water supply, sewage disposal and drainage.
- 32. PUBLIC ROAD OR STREET: A road or street for which a municipality, county or a state or federal agency has maintenance responsibility.
- 33. RECREATIONAL VEHICLE PARK: A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers or automobiles for transient dwelling purposes.
- 34. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.
- 35. RIGHT-OF-WAY: A strip of land dedicated or acquired for use as a public way.
- 36. STATE: State of Montana.
- 37. STREET TYPES: For purposes of these regulations, street types are defined as follows:
 - a. Alley: A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
 - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - f. Half-Street: A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.

- g. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - h. Loop: A local street which begins and ends on the same street, generally used for access to properties.
 - i. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
38. SUBDIVIDER: Any person, firm or corporation, or other entity who causes land to be subdivided or who proposes a subdivision of land.
39. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any re-subdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than 160 acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act are exempt from the provisions of the Act [76-3-103(14), MCA].
40. SURVEYOR (REGISTERED LAND SURVEYOR): A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
41. SURVEYOR (EXAMINING LAND SURVEYOR): A registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
42. SWALE: A drainage channel or depression designed to direct surface water flow.
43. TRACT: Land area proposed to be subdivided.
44. TRACT OF RECORD: A parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(15), MCA].
45. VICINITY SKETCH: A map at a scale suitable to locate the proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.

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